

STATE LAW LIBRARY

DEC 14 1979

OF MONTANA

REVISED CODES OF MONTANA

VOLUME 7

1975 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 7 OF THE
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 7
THROUGH VOLUME 535, PACIFIC
REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



REVISED CODES
OF
MONTANA

VOLUME 7

1975 Cumulative Pocket Supplement

Copyright © 1965, 1967, 1969, 1971, 1973, 1974 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

Copyright © 1976 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

WESLEY W. WERTY

THE ALLEN SMITH COMPANY

NEW LAWS IN VOLUME 7

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1965

Attachment released if no proceedings taken in action, 93-4331.1.
Exemptions from execution, waiver in unsecured note unenforceable, 93-5813.1.
Judicial sales, validation, 93-5846.
Montana Rules of Appellate Civil Procedure, Rules 1 to 43.
Recording of judgment as notice despite defect in proceedings, 93-5710.1.

ENACTED IN 1967

Actions relating to unincorporated associations, M. R. Civ. P., Rule 23.2.
Derivative actions by shareholder, M. R. Civ. P., Rule 23.1.
Directed verdict, motion for, M. R. Civ. P., Rules 50(c) and (d).
Foreign law, determination of, M. R. Civ. P., Rule 44.1.
Interpreter, court appointment of, M. R. Civ. P., Rule 43(f).
Judges' retirement system, 82A-210.2, 93-1107, 93-1110 to 93-1132.
Justices' courts, pleadings, 93-6802.1, 93-6802.2.
Recording of judgment before 1967 as notice, 93-5710.2.
Validation of judicial sales before 1967, 93-5846.

ENACTED IN 1968

Removal to federal district court, transmittal of file, Rule 77(e).

ENACTED IN 1969

Drawing additional jurors, 93-1512.
Uniform Reciprocal Enforcement of Support Act, revised, 93-2601-41 to 93-2601-82.
Validation of defective judgments or decrees affecting realty, 93-5710.3.
Validation of judicial sales before 1969, 93-5846.

ENACTED IN 1971

Attorney fees, contractual right reciprocal, 93-8601.1.
Construction contractors, limitation of actions against, 93-2619 to 93-2623.
Medical malpractice actions, limitation, 93-2624.
Relocation assistance on land acquisitions in federally assisted programs, 93-9927 to 93-9944.
Validation of defective judgments or decrees affecting realty, 93-5710.4.
Validation of judicial sales before 1971, 93-5846.

ENACTED IN 1973

Coal, public policy on surface or open pit mining, 93-9902.1.
Eminent domain, offer by condemnor before trial, 93-9921.1.
Judicial nomination commission, 93-705 to 93-717.
Judicial standards commission, 93-718 to 93-728.
Justices of the peace, supplies, salaries and office hours, 93-412 to 93-414.
Validation of defective judgments or decrees affecting realty, 93-5710.5.
Validation of judicial sales before 1973, 93-5846.
Voluntary partial payment of claims, effect, 93-2201-7 to 93-2201-10.

ENACTED IN 1975

Costs awarded plaintiff in actions to enforce constitutional right to know, 93-8632.
Deaf persons, appointment of interpreters for, 93-514.
Small claims courts, creation, jurisdiction, and procedure, 93-322 to 93-344.

AMENDMENTS IN VOLUME 7

- Amended pleadings, relation back, M. R. Civ. P., Rule 15(c).
- Attachment, undertaking, 93-4304.
- Attorneys, admission to practice, 93-2001, 93-2002, 93-2014.
- Birth date, judicial determination, 93-101-4.
- Change of name, 93-100-2.
- Change of venue, 93-2908, M. R. Civ. P., Rule 12(b).
- City courts, 93-411.
- Claim and delivery of personal property, 93-4102.
- Class action, M. R. Civ. P., Rule 23 generally.
- Counterclaim and cross-claim, M. R. Civ. P., Rule 13(h).
- Court reporters, 93-1906.
- Default judgment, M. R. Civ. P., Rule 55(b).
- Defenses and objections,
 - Affirmative defenses, M. R. Civ. P., Rule 86(a).
 - Consolidation, M. R. Civ. P., Rule 12(g).
 - Denials, M. R. Civ. P., Rule 8(c).
 - Pleading, M. R. Civ. P., Rule 12(b).
 - Preliminary hearings, M. R. Civ. P., Rule 12(d).
 - Waiver, M. R. Civ. P., Rule 12(h).
- Depositions, M. R. Civ. P., Rules 28(b) and (e).
- Depositions pending action, objections to admissibility, M. R. Civ. P., Rule 26(e).
- Directed verdict, motion for, M. R. Civ. P., Rules 50(a) and (b).
- Dismissal of action,
 - For failure to serve summons, M. R. Civ. P., Rule 41(e).
 - Involuntary dismissal, effect of, M. R. Civ. P., Rule 41(b).
- Disqualification of judge, 93-901.
 - Judge pro tempore, 93-2906.
- District courts,
 - Judicial districts and number of judges, 93-301, 93-302.
 - Jurisdiction and powers, 93-318.
 - Qualifications of judges, 93-702.
 - Salaries and expenses of judges, 93-303, 93-305, 93-313.
- Eminent domain, proceedings under, 93-9902, 93-9905, 93-9908, 93-9911 to 93-9913.
- Exceptions unnecessary to preserve record, M. R. Civ. P., Rule 46.
- Findings by court, M. R. Civ. P., Rule 52(a) and (b).
- Forcible entry and detainer actions, 93-9705, 93-9706.
- Holidays, nonjudicial days, 93-507.
- Impeachment jurisdiction, 93-104.
- Injunctions, 93-4207, 93-4215, 93-4216.
- Interrogatories to parties, M. R. Civ. P., Rule 33.
- Intervention, M. R. Civ. P., Rules 24(a) and (c).
- Joinder of claims, M. R. Civ. P., Rule 18(a).
- Joinder of persons needed for just adjudication, M. R. Civ. P., Rules 19(a), (b), (c) and (d).
- Judges' retirement system,
 - Administrative expenses, 93-1110.
 - Final salary, 93-1107, 93-1120.
- Judgments, 93-4707.
- Juries,
 - Challenge of jurors, 93-5010.
 - Exemptions from jury duty, 93-1304.
 - Grand juries, 93-1801, 93-1802.
 - Number of jurors, 93-1205.
 - Qualifications of jurors, 93-1301.
 - Selection of jurors, 93-1402, 93-1404, 93-1503.
 - Summons of jurors, 93-1602.
- Jurisdiction of persons in courts, M. R. Civ. P., Rules 4 A, 4 B.
- Justices of the peace,
 - Arrest in civil action before justice, 93-6903.
 - Depositions for use in justice's court, 93-7712.
 - Election to office, 93-401.
 - Execution on judgment, 93-7402.
 - Judgment in civil action before justice, 93-7302, 93-7311.
 - Jurisdiction, 93-408 to 93-410.

AMENDMENTS IN VOLUME 7 (Continued)

Justices of the peace (Continued)

- Number of justices, 93-401.
- Oath of office, 93-401.
- Place of holding court, 93-402.
- Pleadings, 93-6802.2, 93-6811.
- Qualifications for office, 93-401, 93-704.
- Residence requirement, 93-704.
- Special constables, appointment, 93-7709.
- Substituting for another justice, 93-403, 93-7704.
- Summons in civil action, contents and service, 93-6706, 93-6711.
- Term of office, 93-405.
- Training of justices, 93-401.
- Vacancy in office, proceedings on, 93-7605, 93-7607.
- Venue of civil action in justice's court, 93-6601, 93-6602.

Limitation of actions,

- Bond issues, actions to prevent, 93-2612.
- Five years, 93-2604.
- Medical malpractice actions, 93-2624.
- Realty, seizin within five years, 93-2504.
- Two years, 93-2607.

New trials, M. R. Civ. P., Rules 59(d) and (e).

Offer of judgment, M. R. Civ. P., Rule 68.

Official record, proof of, M. R. Civ. P., Rules 44(a), (b) and (c).

Oral depositions, M. R. Civ. P., Rule 30(f).

Parties to civil actions,

- Married persons, 93-2803, 93-2804.
- Parents or guardians, 93-2808, 93-2809.
- Unmarried person, action for seduction, 93-2807.

Permissive joinder, M. R. Civ. P., Rule 20(a).

Physical and mental examinations, M. R. Civ. P., Rule 35(b)(2).

Pleadings, service of, M. R. Civ. P., Rule 5(a).

Poor person may sue or defend without costs, 93-8625.

Privileged communications, 93-701-4.

Real party in interest, M. R. Civ. P., Rule 17(a).

Receivers, appointment, 93-4401.

Reciprocal enforcement of support act, 93-2601-57, 93-2601-78.

Records as evidence, reproductions of originals, 93-801-5.

Redemption of property, 93-5834, 93-5836.

Relief from judgment or order, M. R. Civ. P., Rule 60(b).

Removal to federal court, transmittal of file, M. R. Civ. P., Rule 77(e).

Rules of Appellate Civil Procedure,

- Briefs, M. R. App. Civ. P., Rule 23(f).
- Costs on appeal, M. R. App. Civ. P., Rule 33(a).
- Notice of appeal, time for filing, M. R. App. Civ. P., Rule 5.
- Original proceedings in supreme court, M. R. App. Civ. P., Rule 17.
- Petitions for rehearing, M. R. App. Civ. P., Rule 34.
- Record on appeal, M. R. App. Civ. P., Rule 9(f).
- Scope, M. R. App. Civ. P., Rule 1(b).

Rules of Civil Procedure,

- Amendment procedure, M. R. Civ. P., Rule 86(a).
- Statutes superseded, M. R. Civ. P., Rule 86(b), Tables B and C.

Service of process, M. R. Civ. P., Rule 4 D.

Summary judgment proceedings, M. R. Civ. P., Rule 56(c).

Summons, form and issuance, M. R. Civ. P., Rule 4 C.

Supreme court,

- Decisions to be in writing, 93-212.
- Election and term of office, 93-201.
- Expenses of members of commission, 93-232.
- Qualifications for office, 93-702.

Will to be in writing, 93-1401-3.

MONTANA REVISED CODES

TITLE 93—CIVIL PROCEDURE

- Chapter
1. Courts of justice, of record and of impeachment, 93-104.
 2. Supreme court, 93-201, 93-212, 93-232.
 3. District courts, 93-301 to 93-303, 93-305, 93-313, 93-318, 93-322 to 93-344.
 4. Justices' and city courts, 93-401 to 93-403, 93-405, 93-408 to 93-414.
 5. General provisions respecting the powers, proceedings and holding of courts of justice, 93-507, 93-514.
 7. Qualifications, appointment and discipline of judicial officers, 93-702, 93-704 to 93-728.
 9. Disqualification of judicial officers, 93-901.
 11. Miscellaneous provisions respecting courts and judicial officers, 93-1107, 93-1110 to 93-1132.
 12. Juries—different kinds defined, 93-1205.
 13. Jurors—qualifications and exemptions, 93-1301, 93-1304.
 14. Jurors—selection and return, 93-1402, 93-1404.
 15. Jurors—drawing and summoning for courts of record, 93-1503, 93-1512.
 16. Jurors—summoning for justices' and inferior courts and courts of inquest, 93-1602.
 18. Juries—how impaneled—alternates, 93-1801, 93-1802.
 19. Court reporters, 93-1906.
 20. Attorneys—qualifications—admission—license and disbarment, 93-2001, 93-2014.
 25. Limitation of actions for recovery of real property, 93-2504.
 26. Limitation of other actions, 93-2604, 93-2607, 93-2612, 93-2619 to 93-2624.
 28. Parties to civil actions, 93-2803, 93-2804, 93-2807 to 93-2809.
 29. Place of trial of civil actions, 93-2906, 93-2908.
 41. Claim and delivery of personal property, 93-4102.
 42. Injunction, 93-4207, 93-4215, 93-4216.
 43. Attachment, 93-4304, 93-4331.1.
 44. Receivers, 93-4401.
 47. Judgments in general, 93-4707.
 50. Trial by jury—formation of jury—challenges, 93-5010.
 57. Judgment—manner of giving and entry—judgment roll and docket—lien of, 93-5708, 93-5710.1 to 93-5710.5.
 58. The execution, 93-5813.1, 93-5834, 93-5836, 93-5846.
 66. Justices' courts—place of trial of actions, 93-6601, 93-6602.
 67. Justices' courts—manner of commencing actions in, 93-6706, 93-6711.
 68. Justices' courts—pleadings in, 93-6802.1, 93-6802.2, 93-6811.
 69. Justices' courts—provisional remedies—arrest in civil actions—attachment—claim and delivery, 93-6903.
 73. Justices' courts—judgment in, 93-7302, 93-7311.
 74. Justices' courts—execution from, 93-7402.
 76. Justices' courts—dockets, 93-7605, 93-7607.
 77. Justices' courts—general provisions, 93-7704, 93-7709, 93-7712.
 80. Supreme court—appeals to, 93-8001, 93-8002, 93-8013.
 86. Costs and disbursements—cost bill—suit in forma pauperis, 93-8601.1, 93-8625, 93-8632.
 97. Forcible entry and unlawful detainer—actions for, 93-9705, 93-9706.
 99. Eminent domain, 93-9902, 93-9902.1, 93-9905, 93-9908, 93-9911 to 93-9913, 93-9921.1, 93-9927 to 93-9944.
 100. Names—change of names of persons—of watercourses, 93-100-2.
 701. Evidence—witnesses, 93-701-4.
 801. Evidence—Uniform Business Records as Evidence Act—Uniform Photographic Copies of Business and Public Records as Evidence Act, 93-801-5.

- 1401. Evidence—indispensable—unwritten agreements—conclusive—unanswerable, 93-1401-3.
- 2201. Evidence—rules in particular cases, 93-2201-7 to 93-2201-10.
- 2601. Revised Uniform Reciprocal Enforcement of Support Act, 93-2601-41 to 93-2601-82.
- 2701. Montana Rules of Civil Procedure, Rules 4, 5(a), 6(b), 8(b), (c), 12(b), (d), (g), (h), 13(h), 15(c), 17(a), 18(a), 19(a) to (d), 20(a), 23(a) to (f), 23.1, 23.2, 24(a), (c), 26(e), 28(b), (e), 30(f), 33, 35(b) (2), 41(b), (e), 43(f), 44(a) (1), (2) to (c), 44.1, 46, 47(b), 50(a) to (d), 52(a), (b), 55(b) (2), 56(c), 59(a) to (f), 60(b), (c), 68, 72, 77(e), 86(a), (b), Tables B, C.
- 2901. Support of children born out of wedlock, Repealed—Section 31, Chapter 512, Laws of 1975.
- 3001. Montana Rules of Appellate Civil Procedure, Rules 1 to 43, Appendix of Forms, Tables A to C.

CHAPTER 1—COURTS OF JUSTICE, OF RECORD AND OF IMPEACHMENT

Section 93-104. Jurisdiction.

93-104. (8787) Jurisdiction. The court has jurisdiction to try impeachments, when presented by the house of representatives, of the governor, executive officers, heads of state departments and judicial officers for felonies and misdemeanors or malfeasance in office.

History: En. Sec. 7, C. Civ. Proc. 1895; re-en. Sec. 6241, Rev. C. 1907; re-en. Sec. 8787, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1973. Cal. C. Civ. Proc. Sec. 37.

Amendments

The 1973 amendment substituted "executive officers, heads of state departments" for a reference to other state officers; deleted "except justices of the peace" following "judicial officers"; and substituted "felonies" for "high crimes."

CHAPTER 2—SUPREME COURT

- Section 93-201. Justices—number increased to five—election and term of office.
- 93-212. Decisions to be in writing.
- 93-232. Expenses of members of commission.

93-201. (8790) Justices—number increased to five—election and term of office. The supreme court consists of a chief justice and four associate justices, who are elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their offices for the term of eight (8) years from and after the first Monday of January next succeeding their election.

History: En. Sec. 12, C. Civ. Proc. 1895; re-en. Sec. 6244, Rev. C. 1907; amd. Sec. 1, Ch. 31, Ex. L. 1919; re-en. Sec. 8790, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1973. Cal. C. Civ. Proc. Sec. 40.

of office from six to eight years; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 13, Laws 1973 read "Sections 93-202, 93-203, 93-204, 93-205, 93-206, R. C. M. 1947, are repealed."

Amendments

The 1973 amendment increased the term

93-202 to 93-206. (8791 to 8795) Repealed.

Repeal

Sections 93-202 to 93-206 (Secs. 2 to 6, Ch. 31, Ex. L. 1931), relating to appointments of additional justices to increase

the supreme court from three to five justices, were repealed by Sec. 2, Ch. 13, Laws 1973.

93-209. (8798) Repealed.**Repeal**

Section 93-209 (Sec. 14, C. Civ. Proc. 1895), relating to filling of vacancies in

office of supreme court justice, was repealed by Sec. 14, Ch. 470, Laws 1973. For new law, see secs. 93-705 to 93-717.

93-212. (8801) Decisions to be in writing. In the determination of causes, all decisions of the supreme court must be given in writing, and the grounds of the decision must be stated, and each justice agreeing or concurring with the decision must so indicate by signing the decision. Any justice disagreeing with a decision must so indicate by written dissent.

History: Ap. p. Sec. 440, p. 132, Bannack Stat.; re-en. Sec. 597, p. 157, Cod. Stat. 1871; re-en. Sec. 17, C. Civ. Proc. 1895; re-en. Sec. 6249, Rev. C. 1907; re-en. Sec. 8801, R. C. M. 1921; amd. Sec. 1, Ch. 271, L. 1975. Cal. C. Civ. Proc. Sec. 49.

Amendments

The 1975 amendment added "and each justice agreeing or concurring with the decision must so indicate by signing the decision" to the first sentence; and added the second sentence.

93-214. (8803) Original jurisdiction.**Declaratory Judgment**

Determination of legal rights concerning election of delegates and implementation of state constitutional convention was properly decided in declaratory judgment action by supreme court under its original jurisdiction in aid of its appellate jurisdiction. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

93-216. (8805) Powers and duties of supreme court on appeals.**Equity Case**

In an equity case it is proper for the appellate court to pry into the factual issues of the case and the decision must hinge on factual observations unless the case is returned to the lower court for further proceedings. Jenson v. Olson, 144 M 224, 395 P 2d 465, 468.

The supreme court in reviewing an equity case will review the law therein and also will review the evidence to that extent necessary to ascertain whether the findings of fact by the trial court are substantially supported and sufficient to support the conclusions of law derived therefrom. Bender v. Bender, 144 M 470, 397 P 2d 957.

Supreme court in equity case not only has function of reviewing law involved but also reviews evidence to extent of determining whether findings of fact by trial court are supported by substantial evidence. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

The plaintiff's claim of a resulting trust in real property, raised after a period of 24 years, and after the principal parties are dead, warrants the application of the doctrine of laches. Adair v. Capital Invest Co., — M —, 525 P 2d 548.

Nuisance Cases

Supreme court will not hesitate to set aside lower court finding that nuisance exists where there is no substantial evidence on which to base finding. Kasala

v. Kalispell Pee Wee Baseball League, 151 M 109, 439 P 2d 65, 32 ALR 3d 1120.

Probate Proceedings

Supreme court reversed where evidence did not support district court finding that will was drafted at direction of decedent and that he was aware of its contents when he signed. Erickson v. Erickson, 152 M 179, 448 P 2d 144.

Remand to District Court

Trial court abused discretion in dismissing action for failure of plaintiff to prosecute case returned by supreme court to lower court for new trial where trial court failed to set trial for next jury term as per order of supreme court under statute providing that supreme court may direct new trial. Jangula v. United States Rubber Co., 149 M 241, 425 P 2d 319.

Where testimony given at trial did not conform to trial court's findings of fact concerning property valuation in divorce case, case was remanded to trial court for hearing to establish proper division of property and/or alimony for support of defendant. Whitman v. Whitman, — M —, 519 P 2d 966.

Scope of Review

Function of supreme court on review is to determine whether there is substantial evidence to support findings of fact and conclusions of law. Peery v. Higgins, 152 M 140, 447 P 2d 481.

Review of evidence is limited to determining whether there is substantial evidence to support trial court's findings of fact and whether such findings are sufficient to support conclusions of law. *Keller v. Martin*, 153 M 9, 452 P 2d 422.

Specific Performance

Where district court decree ordering conveyance of property contained directions as to distribution of the sale price

that could be construed as at variance from its findings as to ownership, supreme court could modify decree so as to distribute money in accordance with the findings. *Morris v. Monk*, 158 M 163, 489 P 2d 1029.

References

Kyser v. Hiebert, 142 M 466, 385 P 2d 90; *State ex rel. Keast v. Krieg*, 147 M 164, 410 P 2d 710.

93-220. Repealed.

Repeal

Section 93-220 (Sec. 2, Ch. 139, L. 1957), relating to filling vacancy on su-

preme court, was repealed by Sec. 14, Ch. 470, Laws 1973. For new law, see secs. 93-705 to 93-717.

93-232. Expenses of members of commission. Members of said commission shall serve without compensation, but shall be reimbursed for travel expenses, as provided for in sections 59-538, 59-539, and 59-801, incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 12, Ch. 255, L. 1959; amd. Sec. 60, Ch. 439, L. 1975.

expenses, as provided for in sections 59-538, 59-539, and 59-801" for "actual travel and other expenses."

Amendments

The 1975 amendment substituted "travel

CHAPTER 3—DISTRICT COURTS

- Section 93-301. Judicial districts defined.
 93-302. Number of judges.
 93-303. Salaries of district judges.
 93-305. Expenses when sitting out of district, or attending judges' conference.
 93-313. Expenses of judges holding court in other counties.
 93-318. Original jurisdiction.
 93-322. Small claims court authorized.
 93-323. Creation of small claims court.
 93-324. Duration of small claims court.
 93-325. Appointment of judge—salary—qualifications.
 93-326. Location—office hours—duties of judge.
 93-327. Multi-county small claims courts.
 93-328. Act to be liberally construed.
 93-329. Jurisdiction.
 93-330. Parties—representation.
 93-331. Venue.
 93-332. Commencement of actions.
 93-333. Order of court—contents.
 93-334. Service on defendant.
 93-335. Hearing date—how set.
 93-336. Return of service.
 93-337. Defendant's counterclaim—answer.
 93-338. Attachment—execution.
 93-339. Proceedings informal—court reporters.
 93-340. Small claims jury—waiver—request.
 93-341. Evidence—subpoena power.
 93-342. Entry of judgment.
 93-343. Appeals.
 93-344. Fees—cost.

93-301. (8812) Judicial districts defined. In this state there are eighteen judicial districts, distributed as follows:

First district: Lewis and Clark and Broadwater counties.

Second district: Silver Bow county.

Third district: Deer Lodge, Granite, and Powell counties.

Fourth district: Missoula, Mineral, Lake, Ravalli, and Sanders counties.

Fifth district: Beaverhead, Jefferson, and Madison counties.

Sixth district: Park and Sweet Grass counties.

Seventh district: Dawson, McCone, Richland, and Wibaux counties.

Eighth district: Cascade and Chouteau counties.

Ninth district: Teton, Pondera, Toole, and Glacier counties.

Tenth district: Fergus, Judith Basin, and Petroleum counties.

Eleventh district: Flathead and Lincoln counties.

Twelfth district: Liberty, Hill, and Blaine counties.

Thirteenth district: Yellowstone, Big Horn, Carbon, Stillwater, and Treasure counties.

Fourteenth district: Meagher, Wheatland, Golden Valley, and Musselshell counties.

Fifteenth district: Roosevelt, Daniels, and Sheridan counties.

Sixteenth district: Custer, Carter, Fallon, Prairie, Powder River, Garfield, and Rosebud counties.

Seventeenth district: Phillips and Valley counties.

Eighteenth district: Gallatin county.

History: En. Sec. 6256, Rev. C. 1907; re-en. Sec. 8812, R. C. M. 1921; amd. Sec. 1, Ch. 91, L. 1929; amd. Sec. 1, Ch. 23, L. 1973.

Amendments

The 1973 amendment increased the number of districts from seventeen to

eighteen and transferred Gallatin county from the sixth to the eighteenth district.

Repealing Clause

Section 2 of Ch. 23, Laws 1973 read "Sections 93-301.1, 93-301.2, 93-301.3, and 93-301.4, R. C. M. 1947, are repealed."

93-301.1 to 93-301.4. Repealed.

Repeal

Sections 93-301.1 to 93-301.4 (Secs. 1 to 4, Ch. 80, L. 1947), creating the

eighteenth judicial district, were repealed by Sec. 2, Ch. 23, Laws 1973. For present law, see sec. 93-301.

93-302. (8813) Number of judges. In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district, and whose term of office must be six (6) years, to wit: In the first, second, eleventh and sixteenth, two judges each, in the thirteenth, eighth and fourth, three judges, and, in all other districts, one judge each.

History: En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1929; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973.

Amendments

The 1973 amendment increased the term of office from four to six years; and deleted a second paragraph relating to the appointment of a judge of the fourth district to serve until the 1964 election.

93-303. (8814) Salaries of district judges. The annual salary of each district judge shall be twenty-five thousand dollars (\$25,000).

History: En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch.

212, L. 1963; amd. Sec. 2, Ch. 308, L. 1967; amd. Sec. 1, Ch. 322, L. 1969; amd. Sec. 1, Ch. 4, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 377, L. 1974.

Amendments

The 1967 amendment increased from \$14,000 to \$15,000 the annual salary for district judges.

The 1969 amendment increased the annual salary from \$15,000 to \$19,000.

The 1971 amendment increased the annual salary from \$19,000 to \$20,500, effective July 1, 1971.

The 1974 amendment increased the annual salary from \$20,500 to \$25,000, effective July 1, 1974.

Repealing Clause

Section 3 of Ch. 308, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 377, Laws 1974 read "This act is effective July 1, 1974."

93-305. (8816) Expenses when sitting out of district, or attending judges' conference. Every judge who shall sit in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own, or in the supreme court, or who shall attend a conference of judges in Helena called by the chief justice of the supreme court, shall be paid his travel expenses while engaged in that service as follows: His travel expenses in going from the county seat which he makes his place of residence to the place of trial, or conference, and return, and his board and lodging while engaged in the trial, hearing, or conference. All travel expense reimbursements shall be determined as provided for in sections 59-538, 59-539, and 59-801.

History: En. Sec. 1, Ch. 3, L. 1907; Sec. 293, Rev. C. 1907; re-en. Sec. 8816, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1953; amd. Sec. 61, Ch. 439, L. 1975.

Amendments

The 1975 amendment substituted "travel expenses" for "actual expenses" and "actual traveling expenses" in the first sentence; and added the second sentence.

93-309. (8820) Repealed.

Repeal

Section 93-309 (Sec. 35, C. Civ. Proc. 1895), relating to vacancies on the district

court bench, was repealed by Sec. 14, Ch. 470, Laws 1973. For new law, see secs. 93-705 to 93-717.

93-313. (8824) Expenses of judges holding court in other counties. Each district judge of a judicial district in this state, composed of more than one county, when, for the purpose of holding court and disposing of judicial business, he goes to a county of his judicial district, other than the county in which he resides, and therein holds court or transacts judicial business, shall be paid all of his actual and necessary expenses of transportation and living, incurred on account thereof, and all expenditures made therefor, as provided for in sections 59-538, 59-539, and 59-801, from the time he leaves his place of residence until he returns thereto.

History: En. Sec. 1, Ch. 91, L. 1911; re-en. Sec. 8824, R. C. M. 1921; amd. Sec. 2, Ch. 455, L. 1973; amd. Sec. 62, Ch. 439, L. 1975.

Amendments

The 1973 amendment added the second sentence.

The 1975 amendment inserted "as provided for in sections 59-538, 59-539, and 59-801" near the end of the section; and deleted a final sentence which read "Actual and necessary expenses of transportation incurred when a judge uses his own automobile shall be calculated at the rate of twelve cents (\$.12) per mile."

93-318. (8829) Original jurisdiction. (1) The district court has original jurisdiction in:

- (a) all criminal cases amounting to felony,
- (b) all civil and probate matters,
- (c) all cases at law and in equity,
- (d) all cases of misdemeanor not otherwise provided for, and
- (e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has the power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States.

(3) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction, and other original remedial writs, and all writs of habeas corpus, on petition by, or on behalf of any person held in actual custody in their respective districts. Injunctions, writs of prohibition, and habeas corpus may be issued and served on legal holidays and nonjudicial days.

History: En. Sec. 41, C. Civ. Proc. 1895; re-en. Sec. 6275, Rev. C. 1907; re-en. Sec. 8829, R. C. M. 1921; amd. Sec. 1, Ch. 11, L. 1973. Cal. C. Civ. Proc. Sec. 76.

Amendments

The 1973 amendment divided the section into numbered subdivisions; rewrote subdivision (1) to conform to the new constitution; and made minor changes in style.

93-320. (8831) Process.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640.

93-322. Small claims court authorized. There may be created within the jurisdiction of the district court of any county of the state of Montana a separate court, known as the "Small Claims Court."

History: En. 93-322 by Sec. 1, Ch. 519, L. 1975.

Title of Act

An act providing for small claims courts in the state of Montana.

93-323. Creation of small claims court. A small claims court may be created by a resolution passed by the board of county commissioners after consultation with the district court judges of the judicial district in which such county is located, or by county initiative as provided in Title 37, chapter 3, R. C. M. 1947. Upon such order or passage of the resolution or initiative, the judge of the appropriate judicial district shall, by court order, establish a small claims court under the provisions of this act. When the order is filed with the clerk of the district court of the appropriate county the clerk of the district court becomes the clerk of the small claims court.

History: En. 93-323 by Sec. 2, Ch. 519, L. 1975.

93-324. Duration of small claims court. A small claims court created under this act continues in existence until abolished by the same means by which it was formed under section 93-323. Any small claims court may be abolished by county initiative as provided in section 93-323.

History: En. 93-324 by Sec. 3, Ch. 519, L. 1975.

93-325. Appointment of judge — salary — qualifications. (1) The judges of the judicial district in which a small claims court has been created shall appoint a judge of the small claims court who shall:

- (a) take the oath required of judges;
- (b) serve at the pleasure of the district court judges;
- (c) be paid a salary set by the district court judge; and
- (d) be an attorney licensed to practice law in the state of Montana.

(2) The judge of the district court may appoint more than one (1) small claims court judge for any small claims court and the salary shall be prorated among the judges appointed.

History: En. 93-325 by Sec. 4, Ch. 519,
L. 1975.

93-326. Location—office hours—duties of judge. The small claims court shall be located in the appropriate district and shall be open as required by the district judge. In the event that more than one (1) small claims court judge has been appointed, the judges so appointed may divide their responsibility hereunder. The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance.

History: En. 93-326 by Sec. 5, Ch. 519,
L. 1975.

93-327. Multi-county small claims courts. Where there is more than one county in the judicial district and the county commissioners of more than one county in that district create small claims courts, the district judges may provide that the same judge of small claims court may preside over more than one of the small claims courts in the judicial district. In such cases the salary of the small claims court judge shall be prorated among the counties in which he presides. The judge shall be entitled to collect mileage for the distance actually traveled when required to convene small claims court in more than one county, pursuant to section 59-801.

History: En. 93-327 by Sec. 6, Ch. 519,
L. 1975.

93-328. Act to be liberally construed. It is the purpose of this act to provide a speedy remedy in claims falling hereunder, and to promote a forum in which such claims may be heard and disposed of without the necessity of formal trial. For this reason, the provisions hereof should be liberally construed to provide an informal, but equitable, means of justice, and the judges appointed hereunder are required to assist all parties before them to obtain substantial justice.

History: En. 93-328 by Sec. 7, Ch. 519,
L. 1975.

93-329. Jurisdiction. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when such action arises out of a contract, express or implied, and the amount of the claim, exclusive of costs, does not exceed one thousand

five hundred dollars (\$1,500) and the defendant can be served within the county or counties for which the small claims court has been created. More than one (1) claim may be joined, if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed one thousand five hundred dollars (\$1,500).

(2) A district court judge may require any action filed in district court to be removed to the small claims court, if the amount in controversy does not exceed one thousand five hundred dollars (\$1,500). The small claims court shall hear any action so removed from the district court.

History: En. 93-329 by Sec. 8, Ch. 519,
L. 1975.

93-330. Parties—representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court except as set forth in subsection (3) herein.

(3) An individual shall represent himself in the small claims court. A partnership shall be represented by a partner or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) Notwithstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

History: En. 93-330 by Sec. 9, Ch. 519,
L. 1975.

93-331. Venue. Proper venue for actions commenced in small claims court is the same as that provided by law for civil actions commenced in district court.

History: En. 93-331 by Sec. 10, Ch. 519,
L. 1975.

93-332. Commencement of actions. Actions in small claims court shall be commenced by filing an affidavit with the clerk of court. The clerk of court shall provide forms for the affidavits, which shall be in substantially the following form:

"In the Small Claims Court of the _____ Judicial District in and for the County of _____, State of Montana.

_____, Doc. _____ No. _____
 Plaintiff PLAINTIFF'S COMPLAINT/
 vs. AFFIDAVIT NOTICE TO
 Defendant DEFENDANT, SEEKING
 MONEY DAMAGES

Plaintiff states that defendant(s) owe and should be ordered to pay to me the sum of _____, because on _____ at _____, the defendant(s)

(date) (place)

Plaintiff declares that the defendant or defendants are not a "person in military service" or "person in the military service of the United States" as defined in Sec. 101 of the Soldier's and Sailor's Relief Act, 1940. To the best of my knowledge and belief, the defendant named above resides at the following address, or the following is the business address:

My printed name and printed address are as follows:

Signed in my presence _____

Signature: _____

Clerk or Deputy _____

Today's date: _____

ORDER OF THE COURT/NOTICE TO DEFENDANT

This claim has been filed against you. You must appear before this court on _____ at _____ at _____. If you do not appear, a
 (date) (time) (location)

judgment may be entered against you. Costs of the action also may be charged against you. You should read the information on the back of this claim and notice. If you have any questions about the procedure, you may contact the Clerk of the Court in person at _____

(location of court)

or by telephone at _____,
 (number)

 Clerk of the Court
 By: _____

History: En. 93-332 by Sec. 11, Ch. 519,
 L. 1975.

93-333. Order of court—contents. (1) Upon filing the affidavit and payment of the fee hereinafter provided, the clerk of court shall cause to be delivered to the sheriff of the county of the defendant's residence a copy of the affidavit together with the original and a copy of an order issued by the court, directed to the defendant, and directing the defendant to pay the claim set forth in the affidavit, or deliver up the property de-

scribed, or, in the alternative, to appear and answer the claim set forth in the affidavit.

(2) The order shall:

(a) specify the time, date, and place set for hearing the claim;

(b) state that if the defendant fails to appear at the hearing and has not satisfied the claim, judgment will be entered against him in the amount or for the relief claimed, for costs; and

(c) be signed by the clerk of court and bear the seal of the court.

History: En. 93-333 by Sec. 12, Ch. 519,
L. 1975.

93-334. Service on defendant. The original order shall be shown to the defendant and a copy of it along with a copy of the affidavit shall be served upon the defendant by the sheriff in the same manner provided by law for service of process in civil actions in district court. The provisions of law relating to sheriff's fees are applicable to this section.

History: En. 93-334 by Sec. 13, Ch. 519,
L. 1975.

93-335. Hearing date—how set. The date for the appearance of the defendant to be set forth in the order shall be determined by the clerk of court in accordance with rules adopted by the small claims judge, and shall not be more than thirty (30) nor less than ten (10) days from the date of the order. Service of the order and copy of the affidavit shall be made upon the defendant not less than seven (7) days prior to the date set for his appearance by the order. If the order is not timely served, plaintiff may have a new appearance date set by the clerk and a new order issued and delivered to the sheriff, and, if necessary, repeated orders may be issued at any time within one year after the commencement of the action.

History: En. 93-335 by Sec. 14, Ch. 519,
L. 1975.

93-336. Return of service. The sheriff, after effecting service, shall make return upon the original order and file it with the clerk of court.

History: En. 93-336 by Sec. 15, Ch. 519,
L. 1975.

93-337. Defendant's counterclaim—answer. (1) If the defendant wishes to assert a counterclaim against the plaintiff he shall file a written answer setting forth his counterclaim against the plaintiff and shall cause the answer to be served upon the plaintiff not less than seventy-two (72) hours before the date set for the hearing. Service shall be made in the same manner in which service is made upon the defendant.

(2) A counterclaim or setoff may not exceed one thousand five hundred dollars (\$1,500). If a counterclaim or setoff is asserted in excess of one thousand five hundred dollars (\$1,500), the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff only to the question of

whether plaintiff's claim is discharged thereby, leaving defendant to prosecute the balance of his claim in appropriate district court action.

History: En. 93-337 by Sec. 16, Ch. 519,
L. 1975.

93-338. Attachment—execution. Attachment or prejudgment garnishment is not available in actions brought in small claims court. Proceedings to enforce or collect a judgment are governed by the laws relating to executions upon district court judgments.

History: En. 93-338 by Sec. 17, Ch. 519,
L. 1975.

93-339. Proceedings informal—court reporters. If the action is tried to the court, the proceedings shall be informal to the extent possible in order to dispense speedy justice to the parties. A reporter is not necessary unless the judge finds the issues sufficiently complex that a record is desirable, in which case he shall make arrangements with a court reporter of the district court to take the testimony. The judge shall make findings of fact sufficient to establish in full the basis of his judgment, and shall file them with his judgment. If a jury is empaneled, it shall try all issues of fact, and in such case there shall be a court reporter.

History: En. 93-339 by Sec. 18, Ch. 519,
L. 1975.

93-340. Small claims jury—waiver—request. The plaintiff, by filing the affidavit for a proceeding in small claims court waives the right to jury trial. Defendant may request a jury provided such request is made not less than forty-eight (48) hours prior to the date set for hearing. If defendant pleads a counterclaim or setoff, he, too, waives a jury trial. If a jury is requested, it shall be empaneled in the same fashion as provided for district court juries in civil cases involving less than ten thousand dollars (\$10,000).

History: En. 93-340 by Sec. 19, Ch. 519,
L. 1975.

93-341. Evidence—subpoena power. Both parties have the right to offer evidence, written and oral, and the judge may direct the production of evidence as he deems appropriate. The small claims court has the subpoena power granted to district courts in civil cases.

History: En. 93-341 by Sec. 20, Ch. 519,
L. 1975.

93-342. Entry of judgment. Upon the conclusion of a case tried to the court the judge shall make his findings and enter judgment. Judgment shall be entered upon a jury verdict in the same manner as is provided for district court jury trials.

History: En. 93-342 by Sec. 21, Ch. 519,
L. 1975.

93-343. Appeals. If either party is dissatisfied with the judgment of the small claims court he may appeal to the district court of the county

where the judgment was rendered, in the same fashion as appeals in other civil actions. Any such appeal shall be tried de novo.

In the event that the parties are represented by counsel on appeal, the judge may grant the prevailing party, in addition to costs, reasonable attorney fees.

History: En. 93-343 by Sec. 22, Ch. 519, L. 1975.

93-344. Fees—cost. (1) The clerk of court shall collect a fee of five dollars (\$5):

(a) from the plaintiff upon the filing of the affidavit;

(b) from the defendant upon the filing of a written answer.

(2) The laws relating to paupers' affidavits apply to actions before the small claims courts.

(3) The prevailing party in an action before the small claims court is entitled to costs.

History: En. 93-344 by Sec. 23, Ch. 519, L. 1975.

that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 24 of Ch. 519, Laws 1975 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts

CHAPTER 4—JUSTICES' AND CITY COURTS

Section 93-401. Justices' courts and justices of the peace.

93-402. Courts—when open for business.

93-403. Holding court for another justice.

93-405. Terms of office.

93-408. Jurisdiction of justices' courts.

93-409. Concurrent jurisdiction.

93-410. Criminal jurisdiction.

93-411. City courts.

93-412. Facilities furnished to justices by county.

93-413. Salaries of justices of the peace.

93-414. Office hours of justices.

93-401. (8833) Justices' courts and justices of the peace. (1) There must be at least one (1) justice court in each county of the state. The board of county commissioners of each county of the state shall have authority to constitute one (1) additional justice court in their respective counties as the board deems necessary. One (1) justice court in each county must be located at the county seat and the board of county commissioners shall determine the location of the other justice court in their respective counties. Each justice of the peace must be elected by the qualified electors of the county at the general state election next preceding the expiration of the term of office of his predecessor.

(2) A justice of the peace shall be nominated and elected on the nonpartisan judicial ballot in the same manner as are judges of the district court. Each judicial office shall be a separate and independent office for election purposes and each office shall be numbered by the county commissioners and each candidate for justice of the peace shall specify the number of the office for which he seeks to be elected. A

candidate may not file for more than one (1) office. Section 23-4511 prohibiting political party endorsement for judicial officers shall also apply to justices of the peace.

(3) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office take the constitutional oath of office, which must be filed with the county clerk.

(4) Before the county clerk may file the oath the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana, or

(b) a person who has held the office of justice of the peace within the preceding five (5) years, or

(c) a person who has completed the orientation course of study held under the direction of the university of Montana law school; or if a person is appointed after the course is offered he must agree to take the course at the next offering and failure to do so will disqualify him.

(5) The university of Montana law school shall present a course of study as soon as is practical following each general election. Mileage and per diem shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice of the peace will hold court.

(6) There shall be an annual training session for all elected and appointed justices of the peace. This training session, which may be held in conjunction with the Montana magistrates' association convention, shall be supervised by the supreme court. Mileage and per diem shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice holds court.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R. C. M. 1921; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975. Cal. C. Civ. Proc. Sec. 85.

Amendments

The 1973 amendment designated the language in the former section as subsection (1); reduced the number of justice courts from two per township to one per county; reduced the number of justices to be elected from two per township to one per county; and added subsections (2) through (5).

Chapter 23, Laws of 1974, substituted

"university of Montana law school" in subsection (4)(c) for "Montana Magistrates Association of the state of Montana"; substituted "university of Montana law school" in subsection (5) for "Montana Magistrates Association"; and substituted "as soon as is practical" near the beginning of subsection (5) for "within four (4) weeks."

Chapter 276, Laws of 1974, inserted the provisions in subsection (1) authorizing the board of county commissioners in every county to constitute one additional justice court and directing the location of the justice courts.

The 1975 amendment added subsection (6).

93-402. (8834) Courts—when open for business. A justice's court is always open for the transaction of business, except on legal holidays and nonjudicial days.

History: En. Sec. 61, C. Civ. Proc. 1895; re-en. Sec. 6280, Rev. C. 1907; re-en. Sec. 8834, R. C. M. 1921; amd. Sec. 1, Ch. 92, L. 1933; amd. Sec. 6, Ch. 491, L. 1973; amd. Sec. 3, Ch. 276, L. 1974. Cal. C. Civ. Proc. Sec. 104.

Amendments

The 1973 amendment substituted "county" for "township"; and deleted "provided, that said justice may hold court beyond the limits of his township

as provided in section 93-403" from the end of the section.

The 1974 amendment deleted "where held" following "Courts" in the caption and deleted "may be held at any place selected by the justice holding the same, in the county for which he is elected or

appointed; and such court" following "A justice's court."

Effective Date

Section 4 of Ch. 276, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

93-403. (8835) Holding court for another justice. A justice of the peace of any county may hold the court of any other justice of the peace at his request, and while so acting is vested with the power of the justice for whom he so holds court, in which case the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice for whom he so holds the court. The visiting justice of the peace shall be paid all necessary and actual expenses including mileage by the county where court is held.

History: En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R. C. M. 1921; amd. Sec. 2, Ch. 92, L. 1933; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975. Cal. C. Civ. Proc. Sec. 105.

"county" for "township"; and deleted from the end of the section a proviso and two sentences which allowed the justice to hold court beyond the limits of his township.

The 1975 amendment deleted "of the same county" after "any other justice of the peace" in the first sentence; and added the second sentence.

Amendments

The 1973 amendment substituted

93-405. (8837) Terms of office. The term of office of justices of peace is four (4) years from the first Monday in January next succeeding their election.

History: En. Sec. 64, C. Civ. Proc. 1895; re-en. Sec. 6283, Rev. C. 1907; re-en. Sec. 8837, R. C. M. 1921; amd. Sec. 8, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 110.

Amendments

The 1973 amendment increased the term of office from two to four years.

93-407. (8839) Repealed.

Repeal

This section (Sec. 1, p. 99, L. 1901; Sec. 1, Ch. 35, L. 1921), relating to the oath and bond of the justice of the peace, was

repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds of county officers and employees, see sec. 6-203 et seq.

93-408. (8840) Jurisdiction of justices' courts. The justice courts have jurisdiction:

1. In actions arising on contract for the recovery of money only, if the sum claimed does not exceed fifteen hundred dollars (\$1500) exclusive of court costs;

2. In actions for damages not exceeding fifteen hundred dollars (\$1500) exclusive of court costs for taking, detaining, or injuring personal property, or for injury to real property where no issue is raised by the verified answer of defendant involving the title to or possession of the same; in actions for damages not exceeding fifteen hundred dollars (\$1500) exclusive of court costs for injury to the person; provided, that in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, bastardy, abduction, and alienation of affections, the justice of the peace shall not have jurisdiction;

3. In actions to recover the possession of personal property, if the value of such property does not exceed fifteen hundred dollars (\$1500);

4. In actions for a fine, penalty, or forfeiture, not exceeding fifteen hundred dollars (\$1500), given by statute, or the ordinance of an incorporated city or town, where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

5. In actions upon bonds or undertakings conditioned for the payment of money, if the sum claimed does not exceed fifteen hundred dollars (\$1500), though the penalty may exceed that sum;

6. To take and enter judgment for the recovery of money on the confession of a defendant, when the amount confessed does not exceed fifteen hundred dollars (\$1500) exclusive of court costs.

History: Ap. p. Sec. 546, p. 150, Ban-nack Stat.; amd. Sec. 655, p. 167, Cod. Stat. 1871; re-en. Sec. 715, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 46, L. 1883; re-en. Sec. 735, 1st Div. Comp. Stat. 1887; amd. Sec. 66, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 76, L. 1907; Sec. 6286, Rev. C. 1907; re-en. Sec. 8840, R. C. M. 1921;

amd. Sec. 11, Ch. 420, L. 1975. Cal. C. Civ. Proc. Sec. 112.

Amendments

The 1975 amendment increased the monetary jurisdiction of justices of the peace from \$300 to \$1500 throughout the section.

93-409. (8841) Concurrent jurisdiction. The justices' courts have concurrent jurisdiction with the district courts within their respective counties in actions of forcible entry and unlawful detainer.

History: En. Sec. 67, C. Civ. Proc. 1895; re-en. Sec. 6287, Rev. C. 1907; re-en. Sec. 8841, R. C. M. 1921; amd. Sec. 12, Ch. 420, L. 1975. Cal. C. Civ. Proc. Sec. 113.

Amendments

The 1975 amendment substituted "counties" for "townships."

93-410. (8842) Criminal jurisdiction. The justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

1. Theft of property not exceeding one hundred fifty dollars (\$150) in value.

2. Assault, as defined in section 94-5-201.

3. * * * [Same as parent volume.]

History: En. Sec. 68, C. Civ. Proc. 1895; re-en. Sec. 6288, Rev. C. 1907; re-en. Sec. 8842, R. C. M. 1921; amd. Sec. 13, Ch. 420, L. 1975. Cal. C. Civ. Proc. Sec. 115.

Amendments

The 1975 amendment substituted the present subdivision 1 for "Petit larceny"; and substituted the present subdivision 2 for "Assault in the third degree, as defined in section 94-603."

Driving While under Influence of Intoxicating Liquor

Since the offense of driving a vehicle on a highway while under the influence of intoxicating liquor in violation of section 32-2142 is a misdemeanor, it falls within the jurisdiction of a justice of the peace under this section. *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

93-411. (8843) City courts. (1) City courts are established in incorporated cities and towns, and their organization, jurisdiction, and powers are provided for in Title 11. Police court is hereby renamed city court and all references to police court or police judges in sections of the

Revised Codes of Montana shall be considered amended to read city court, or city judge.

(2) There shall be an annual training session for all elected and appointed judges. This training session, which may be held in conjunction with the Montana magistrates' association convention, shall be supervised by the supreme court. Mileage and per diem shall be paid the elected or appointed judge for attending the course and shall be a proper charge against the city wherein the judge holds court.

History: En. Sec. 80, C. Civ. Proc. 1895; re-en. Sec. 6289, Rev. C. 1907; re-en. Sec. 8843, R. C. M. 1921; amd. Sec. 3, Ch. 165, L. 1975. Cal. C. Civ. Proc. Sec. 121.

Amendments

The 1975 amendment inserted the subsection (1) designation; substituted "City courts" for "Police courts" at the beginning of subsection (1); added the second sentence of subsection (1); and added subsection (2).

93-412. Facilities furnished to justices by county. (1) The board of county commissioners of the county in which the justice of the peace has been elected or appointed shall provide for the justices of the peace:

(a) the office, courtroom and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment and supplies necessary in the proper keeping of the records and files of the judicial office and the transaction of the business;

(c) the latest edition of the Revised Codes of Montana and all official supplements thereto.

(2) All actual and necessary expenses incurred by the justice of the peace in the performance of his official duties is a legal charge against the county.

History: En. Sec. 3, Ch. 491, L. 1973.

Title of Act

An act providing for the minimum number of justices of the peace, their compensation, qualifications, terms of office, training and designation as county officers; providing for the collection of fees by justices and improvement of their facilities; abolishing fees in criminal actions; and deleting references to town-

ships; all to comply with article VII, sections 5 and 7 of the 1972 Montana constitution; amending sections 11-727, 16-2403, 16-2404, 16-2406, 25-307, 93-401 through 93-403, 93-405, 93-704, 93-1602, 93-6601, 93-6602, 93-6706, 93-6903, 93-7302, 93-7311, 93-7402, 93-7605, 93-7607, 93-7704, 93-7709, 93-9705, R. C. M. 1947; and repealing sections 25-303, 25-305 and 25-306, R. C. M. 1947.

93-413. Salaries of justices of the peace. The board of county commissioners shall set salaries for justices of the peace by resolution, provided that:

(1) if the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the two (2) years, 1971 and 1972;

(2) if the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

History: En. Sec. 1, Ch. 491, L. 1973.

93-414. Office hours of justices. In the resolution providing for the salary the county commissioners shall designate the office hours for each justice. Office hours shall be commensurate with the salary provided.

History: En. Sec. 2, Ch. 491, L. 1973.

CHAPTER 5—GENERAL PROVISIONS RESPECTING THE POWERS, PROCEEDINGS AND HOLDING OF COURTS OF JUSTICE

Section 93-507. Nonjudicial days.

93-514. Deaf persons—court appointed interpreters.

93-502. (8845) Courts of record may make rules.

Force of Rules

Trial court rule requiring filing of briefs in support of preliminary motions is proper exercise of authority under this

section and may be enforced by summary denial of motion where brief has not been filed. Hansen v. Kiernan, 159 M 448, 499 P 2d 787.

93-507. (8850) Nonjudicial days. No court must be open, nor must any judicial business be transacted on legal holidays as provided for in section 19-107 and on a day appointed by the president of the United States, or by the governor of this state, for a public fast, thanksgiving, or holiday, except for the following purposes:

1 to 3. * * * [Same as parent volume.]

History: Ap. p. Sec. 467, p. 136, Ban-nack Stat.; re-en. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 121, C. Civ. Proc. 1895; re-en. Sec. 6296, Rev. C. 1907; re-en. Sec. 8850,

R. C. M. 1921; amd. Sec. 14, Ch. 420, L. 1975. Cal. C. Civ. Proc. Sec. 134.

Amendments

The 1975 amendment substituted "on legal holidays as provided for in section 19-107 and" for the specific list of holidays in parent volume.

93-514. Deaf persons—court appointed interpreters. Whenever any deaf person is a party to any legal proceeding of any nature, or a witness therein, the court in all instances shall appoint a qualified interpreter of the deaf sign-language capable of communicating with the deaf person to interpret the proceedings to and the testimony of such deaf person. The court shall determine a reasonable fee for all such interpreter services which shall be paid out of general county funds.

History: En. 93-514 by Sec. 1, Ch. 272, L. 1975.

Title of Act

An act providing interpreters for deaf persons in legal proceedings.

CHAPTER 7—QUALIFICATIONS, APPOINTMENT AND DISCIPLINE OF JUDICIAL OFFICERS

Section 93-702. Qualifications.

93-704. Residence and qualifications of justices of the peace.

93-705. Judicial nomination commission—creation—composition.

93-706. Terms of commission members—vacancy.

93-707. Secretary of commission.

93-708. Quorum.

93-709. Investigation of candidates—application for candidacy.

93-710. Submission of list to governor to fill vacancy.

93-711. Appointment by governor from list submitted.

- 93-712. Governor's failure to nominate.
- 93-713. Confirmation by senate—interim appointment.
- 93-714. Term of appointment—election for unexpired term.
- 93-715. Members of commission ineligible for judicial office.
- 93-716. No compensation—expenses.
- 93-717. Rules of commission.
- 93-718. Judicial standards commission—composition.
- 93-719. Terms of office of commission members.
- 93-720. Termination of membership—vacancy.
- 93-721. No compensation—expenses.
- 93-722. Investigation of judicial officers—complaint—hearing—disciplinary action.
- 93-723. Proceedings confidential—rules.
- 93-724. Determination and order by supreme court.
- 93-725. Judicial officer not to participate in investigation of self or relative.
- 93-726. Disqualification of judge pending criminal prosecution or proceeding before commission.
- 93-727. Suspension on conviction of crime—final disposition.
- 93-728. Order for retirement—removal.

93-701. (8862) Repealed.

Repeal

Section 93-701 (Sec. 160, C. Civ. Proc. 1895), relating to qualifications of justices

of the supreme court, was repealed by Sec. 2, Ch. 15, Laws 1973. For new law, see sec. 93-702.

93-702. (8863) Qualifications. No person is eligible for the office of justice of the supreme court or judge of the district court unless he is a citizen of the United States, who has resided in the state two (2) years immediately before taking office, and has been admitted to practice law in Montana for at least five (5) years prior to the date of appointment or election. A judge of the district court need not be a resident of the district for which he is elected or appointed at the time of his election or appointment, but after his election or appointment, he shall reside in the district for which he is elected or appointed during his term of office. Justices of the supreme court shall reside within the state.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1973. Cal. C. Civ. Proc. Sec. 157.

judges from one year to two years; added the requirement of five years' admission to practice for both supreme court justices and district court judges; applied the qualifications to appointments as well as elections; and added the last sentence.

Amendments

The 1973 amendment combined sections 93-701 and 93-702; eliminated age requirements for justices of the supreme court and district judges; increased the state residency requirement for district

Repealing Clause

Section 2 of Ch. 15, Laws 1973 read "Section 93-701, R. C. M. 1947, is repealed."

93-704. (8865) Residence and qualifications of justices of the peace. Every justice of the peace must reside in the county in which his court is held, and no person is eligible to the office of justice of the peace unless he shall have been a citizen of the United States and a resident of the county, in which he is to serve, for one year next preceding his election or appointment.

History: En. Sec. 163, C. Civ. Proc. 1895; re-en. Sec. 6311, Rev. C. 1907; re-en. Sec. 8865, R. C. M. 1921; amd. Sec. 13, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 159.

Amendments

The 1973 amendment substituted "county" for "township" near the beginning of the section.

93-705. Judicial nomination commission — creation — composition. There is created a judicial nomination commission for the state of Montana, whose function it shall be to provide the governor with a list of candidates for nominee to fill any vacancy on the supreme court or any district court of the state of Montana. The commission shall be composed of seven (7) members as follows:

(1) four (4) lay members, who are neither judges or attorneys, active or retired, and who shall reside in different geographical areas of the state; each of these four (4) members shall be representative of a different industry, business or profession, whether or not actively so engaged or retired; such members shall be appointed by the governor;

(2) two (2) attorneys, actively engaged in the practice of law, one (1) from each congressional district, who shall be appointed by the supreme court;

(3) one (1) district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court, and which for the purpose of the language of this act shall be considered as an appointment.

History: En. Sec. 1, Ch. 470, L. 1973.

Title of Act

An act providing for the filling of vacancies in the office of district court judge

and supreme court justice to comply with article VII, section 8 of the 1972 Montana constitution; repealing sections 93-209, 93-220, 93-309, R. C. M. 1947.

93-706. Terms of commission members—vacancy. (1) All original members named to the commission shall all serve until January 1, 1976. Their successors shall serve as follows:

(a) the members appointed by the governor shall serve for four (4) year terms;

(b) the attorneys elected shall serve a two (2) year term;

(c) the judge elected shall serve a two (2) year term.

(2) Thereafter all members shall serve terms of four (4) years.

(3) In the event a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term, provided such replacement shall be a member of the same group as the member he replaces.

(4) Appointments provided for in this section shall be made within thirty (30) days of the completion of the preceding terms, or within thirty (30) days of the occurrence of any vacancy.

History: En. Sec. 2, Ch. 470, L. 1973.

93-707. Secretary of commission. The commission shall elect one (1) of its members to serve as the secretary, and upon such election shall notify the governor of the name and mailing address of such person; the secretary shall keep a record of all proceedings by the commission, and act as corresponding secretary with the governor's office.

History: En. Sec. 3, Ch. 470, L. 1973.

93-708. Quorum. Four (4) members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor, there must be a concurrence of at least four (4) members.

History: En. Sec. 4, Ch. 470, L. 1973.

93-709. Investigation of candidates—application for candidacy. The commission and each member is authorized to make investigations concerning the qualifications of eligible persons, and any lawyer in good standing who has the qualifications set forth by law for holding judicial office, may be a candidate, and may make application to the commission for consideration, or application may be made by any person on his behalf.

History: En. Sec. 5, Ch. 470, L. 1973.

93-710. Submission of list to governor to fill vacancy. The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within thirty (30) days from the date of the vacancy a list of not less than three (3), nor more than five (5) persons.

History: En. Sec. 6, Ch. 470, L. 1973.

93-711. Appointment by governor from list submitted. The governor must make an appointment from those names submitted by the commission.

History: En. Sec. 7, Ch. 470, L. 1973.

93-712. Governor's failure to nominate. If the governor fails to nominate within thirty (30) days after receipt of the list, the chief justice or acting chief justice shall make the nomination.

History: En. Sec. 8, Ch. 470, L. 1973.

93-713. Confirmation by senate—interim appointment. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session is effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

History: En. Sec. 9, Ch. 470, L. 1973.

93-714. Term of appointment—election for unexpired term. A nominee confirmed by the senate serves until the next succeeding general election. The candidate elected at that election holds the office for the remainder of the unexpired term.

History: En. Sec. 10, Ch. 470, L. 1973.

93-715. Members of commission ineligible for judicial office. Members of the commission are not eligible for nomination to a judicial office during their term on the commission or for one (1) year thereafter.

History: En. Sec. 11, Ch. 470, L. 1973.

93-716. No compensation—expenses. The members of the commission are not entitled to compensation for their services, but they are en-

titled to actual expenses while actually engaged in the discharge of their official duties.

History: En. Sec. 12, Ch. 470, L. 1973.

93-717. Rules of commission. The commission shall make rules for the conduct of its affairs and to provide for the confidentiality of its proceedings.

History: En. Sec. 13, Ch. 470, L. 1973.

Repealing Clause

Section 14 of Ch. 470, Laws 1973 read "Sections 93-209, 93-220, and 93-309, R. C. M. 1947, are repealed."

93-718. Judicial standards commission — composition. There is created a judicial standards commission consisting of five (5) members as follows:

(1) two (2) district court judges, from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court and the two (2) so elected certified as to such election by the chief justice of the supreme court which for the purpose of the language of this act shall be considered as an appointment.

(2) one (1) attorney who has practiced law in this state for at least ten (10) years, appointed by the supreme court.

(3) two (2) citizens from different congressional districts who are not attorneys or judges of any court, active or retired, appointed by the governor.

History: En. Sec. 1, Ch. 95, L. 1973.

Title of Act

An act creating a judicial standards

commission and specifying the composition and the qualifications of the members in compliance with article VII, section 11 of the 1972 Montana constitution.

93-719. Terms of office of commission members. (1) The first appointments made under this act are as follows:

(a) the supreme court shall designate by certificate of the chief justice one (1) district court judge to serve for four (4) years, and one (1) to serve for two (2) years;

(b) the attorney shall serve for four (4) years; and

(c) the governor shall appoint one (1) citizen to serve for four (4) years, and one (1) to serve for two (2) years.

(2) Thereafter, all terms shall be for four (4) years.

History: En. Sec. 2, Ch. 95, L. 1973.

93-720. Termination of membership—vacancy. (1) Commission membership terminates if a member ceases to hold the position that qualified him for appointment.

(2) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 3, Ch. 95, L. 1973.

93-721. No compensation—expenses. A commission member is not entitled to compensation for his services but is entitled to actual expenses incurred in the performance of his duties.

History: En. Sec. 4, Ch. 95, L. 1973.

93-722. Investigation of judicial officers—complaint—hearing—disciplinary action. (1) The commission, or any citizen of the state may upon good cause shown, initiate an investigation of any judicial officer in the state by filing a verified written complaint with the commission.

(2) The commission, after such investigation as it considers necessary and upon the finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal or retirement of a judicial officer; or

(b) request the supreme court to appoint one (1) or more special masters, who are judges of courts of record, to hear and take evidence and to report to the commission.

(3) If after hearing or after considering the record and report of the masters, the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal or retirement of the judicial officer.

History: En. Sec. 5, Ch. 95, L. 1973.

93-723. Proceedings confidential—rules. (1) All papers filed with, and proceedings before the commission or masters are confidential.

(2) The filing of papers with and the testimony given before the commission or masters is privileged communication.

(3) The commission shall make rules for the conduct of its affairs and provide for the confidentiality of its proceedings.

History: En. Sec. 6, Ch. 95, L. 1973.

93-724. Determination and order by supreme court. (1) The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(a) order censure, suspension, removal or retirement of a judicial officer, or

(b) wholly reject the recommendation.

History: En. Sec. 7, Ch. 95, L. 1973.

93-725. Judicial officer not to participate in investigation of self or relative. A judicial officer who is a member of the commission or of the supreme court shall not participate in any proceeding involving his own censure, suspension, removal, or retirement or that of a relative within the sixth degree of consanguinity or that of the spouse of such a relative.

History: En. Sec. 8, Ch. 95, L. 1973.

93-726. Disqualification of judge pending criminal prosecution or proceeding before commission. A judge is disqualified from acting as a judge, without loss of salary, while there is pending:

- (1) an indictment or an information charging him with a crime punishable as a felony under Montana or federal law, or
- (2) a formal proceeding before the commission for his removal or retirement.

History: En. Sec. 9, Ch. 95, L. 1973.

93-727. Suspension on conviction of crime—final disposition. (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law, or of any other crime involving moral turpitude.

(2) If his conviction is reversed, suspension terminates, and he shall be paid his salary for the period of suspension.

(3) If he is suspended and his conviction becomes final, the supreme court shall remove him from office.

History: En. Sec. 10, Ch. 95, L. 1973.

93-728. Order for retirement—removal. (1) Upon an order for retirement, the judicial officer shall be retired with the same rights and privileges as if he retired pursuant to statute.

(2) Upon an order for removal, the judicial officer shall be removed from office and his salary shall cease from the date of the order. He shall be ineligible for any other judicial office and pending further order of the court is suspended from practicing law.

History: En. Sec. 11, Ch. 95, L. 1973.

CHAPTER 9—DISQUALIFICATION OF JUDICIAL OFFICERS

Section 93-901. Cases in which judge may be disqualified—calling in another judge.

93-901. (8868) Cases in which judge may be disqualified—calling in another judge. Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;
2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;
3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from;
4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a judge, justice, magistrate, or justice of the peace. Such affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the court in which the same may be pending.

In any district having only one judge, justice, magistrate, or justice of the peace, the affidavit of disqualification with reference to any action or proceeding to be tried before a jury must be filed at least one day

before the day appointed or fixed by the court for setting the trial calendar; provided, however, this limitation shall not apply unless notice of such setting date shall be given to all parties by the clerk of the court at least fifteen (15) days prior thereto. In all other cases the affidavit must be filed at least fifteen (15) days before the day appointed or fixed for the hearing or trial of any such action, motion, or proceeding (provided such party shall have had notice of the hearing of such action, motion, or proceeding for at least the period of fifteen (15) days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon receiving such notice). Upon the filing of the affidavit, the judge, justice, magistrate, or justice of the peace, as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court nor to the power of calling in another judge, justice, magistrate, or justice of the peace to sit and act in such action or proceeding, providing that no judge, justice, magistrate, or justice of the peace shall so arrange the calendar as to defeat the purposes of this section. No more than two judges, justices, magistrates, or justices of the peace can be disqualified in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge, justice, magistrate, or justice of the peace in any district in which said affidavit is made and filed, upon the first disqualification of a judge, justice, magistrate, or justice of the peace in the cause, another judge, justice, magistrate, or justice of the peace, residing in the district wherein the affidavit is made and filed, must be called in to preside in such action, motion, or proceeding; upon the second or any subsequent disqualification of a judge, justice, magistrate, or justice of the peace in the cause, a judge, justice, magistrate, or justice of the peace of another district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a judge, justice, magistrate, or justice of the peace of another district of the state; when another judge, justice, magistrate, or justice of the peace has assumed jurisdiction of an action, motion, or proceeding, the clerk of the court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge, justice, magistrate, or justice of the peace, called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the court in which such action, motion or proceeding may be pending within three days after the party or his attorney of record, filing such affidavit, has received notice as to the judge, justice, magistrate, or justice of the peace assuming jurisdiction of such action, motion, or proceeding.

5. Nothing contained in subsection 4 of this section shall apply to a justice of the supreme court.

History: Ap. p. Sec. 453, p. 134, Bannack Stat.; re-en. Sec. 610, p. 159, Cod. Stat. 1871; re-en. Sec. 530, p. 179, L. 1877; re-en. Sec. 530, 1st Div. Rev. Stat. 1879; re-en. Sec. 547, 1st Div. Comp. Stat. 1887; amd. Sec. 180, C. Civ. Proc. 1895; amd. Ch. 3, 2nd Ex. L. 1903; re-en. Sec. 6315, Rev. C. 1907; amd. Sec. 1, Ch. 114, L. 1909; re-en. Sec. 8868, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1927; amd. Sec. 1, Ch. 218, L. 1961; amd. Sec. 1, Ch. 82, L. 1963; amd. Sec. 1, Ch. 234, L. 1965; amd. Sec. 2, Ch. 281, L. 1975. Cal. C. Civ. Proc. Sec. 170.

Amendments

The 1965 amendment deleted "by reason of the bias or prejudice of such judge" at the end of the first sentence of subdivision 4; divided subdivision 4 into two paragraphs; and made a minor change in punctuation.

The 1975 amendment substituted "judge, justice, magistrate, or justice of the peace" for "district judge" throughout the section; deleted "district" before "court" throughout the section; deleted references to judicial districts throughout the section; added subdivision 5; and made minor changes in punctuation.

Repealing Clause

Section 2 of Ch. 234, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3, of Ch. 234, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

Constitutionality

The 1965 amendment of this section, deleting the words "by reason of the bias and prejudice of such judge," does not impair the constitutionality of this section, since the affidavit will still be required to state that the party has reason to believe and does believe he cannot have a fair and impartial hearing or trial before the district judge. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

This section does not violate the separation of powers provision of section 1, article IV of the Montana constitution in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Transcript of proceedings of Montana constitutional convention indicates that framers did not intend that article VII, section 6(3) of the new constitution should

in any way affect the calling in of other judges upon disqualification; thus, this statute does not conflict with the 1972 Montana constitution. State ex rel. Lane v. District Court, — M —, 535 P 2d 174.

Compelling Disqualification

Where district court judge attempted to comply with affidavit of disqualification, but was unsuccessful in calling in a district court judge from another judicial district, and was also unsuccessful in attempting to comply with order to show cause, mandamus proceedings against him were dropped but not against a second district court judge who believed he had original jurisdiction and challenged the constitutionality of this section. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Custody Award

District court judge was without jurisdiction to award custody where affidavits of disqualification were filed prior to court's final disposition of various motions even though motion for new trial was pending. State ex rel. Ross v. District Court, 150 M 233, 433 P 2d 778.

Jurisdiction of Disqualified Judge

Trial court, presiding in disqualified judge's stead, was without jurisdiction to dismiss complaint where trial court had not been called to assume jurisdiction and no notice was given to the parties or their attorneys that another judge had been called in or that the action had been transferred to another judge. Wheeler v. Moe, — M —, 515 P 2d 679.

Mandamus

Mandamus is the appropriate remedy to compel a disqualified judge to perform a mandatory duty resting upon him to call in another judge or transfer the cause to another department or court. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

New Trial

This section should not be construed to permit disqualification of a judge pending motion for a new trial because of the provisions of Rule 59(d), M. R. Civ. P. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Parties Entitled to File

Grandnephew who claimed heirship in an intestate estate and who filed a petition to determine heirship was a party within the meaning of this section, and district court erred in quashing timely affidavit of disqualification filed by him. In re Estate of Brown, 158 M 413, 492 P 2d 914.

Pretrial Hearing

Affidavit to disqualify judge from non-jury trial was valid where filed fifteen days prior to trial date despite party's previous consent to a determination of motions at pretrial hearing presided over by judge named in disqualification affidavit. *State ex rel. OB-Gyn Group of Billings, Montana v. District Court*, 159 M 1, 494 P 2d 931.

Remanded Cause

District judge should have honored affidavit of disqualification filed more than four months before day fixed for hearing where mandate of supreme court in remanding cause left it to the district court to make a determination as to the amount due the plaintiffs in the event that sum was not settled between the parties themselves. *State ex rel. Gage v. District Court*, 148 M 284, 419 P 2d 746, 747.

Time for Disqualification

Statutory time for filing affidavit was not extended because counsel learned of trial only day before it began, since under this section attorney's right to request disqualification is derived from party's right and is not an independent right. *State ex*

rel. Kidder v. District Court of Fourth Judicial District In and For County of Sanders, 155 M 442, 472 P 2d 1008.

Affidavit filed three days after plaintiff's counsel received notice of hearing was timely where plaintiff resided in Lake County and was required to travel to Missoula to sign the affidavit and where court was closed another intervening day. *Wheeler v. Moe*, — M —, 515 P 2d 679.

Motion for disqualification of judge was a flagrant abuse of section 93-1101 where affidavit was filed three weeks subsequent to denial of petition for restoration to capacity and petition for restoration was again filed and oral argument heard on same evidence, resulting in granting of petition for restoration; writ of supervisory control was issued ordering grant of guardian's motion to quash second petition. Application of *Stewart*, — M —, 517 P 2d 879.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39; *State ex rel. McNeal v. District Court*, 144 M 550, 399 P 2d 997; *State ex rel. Kinman v. District Court*, 146 M 74, 404 P 2d 517.

CHAPTER 11—MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

- Section 93-1107. Judges' retirement system—definitions.
 93-1109. [Transferred.]
 93-1110. Administrative expenses.
 93-1111. Payments into the Montana judges' retirement fund—investment.
 93-1112. Rules and regulations—actuarial data.
 93-1113. Membership.
 93-1114. Service allowance.
 93-1115. Payments by contributors.
 93-1116. Contributions by the state of Montana.
 93-1117. Vesting of proportional retirement.
 93-1118. Retirement allowance.
 93-1119. Disability retirement allowance.
 93-1120. Involuntary retirement allowance.
 93-1121. Penalty retirement allowance.
 93-1122. Refunds in case of resignation or discharge.
 93-1123. Payments upon death.
 93-1124. Payments in case of death from natural cause.
 93-1125. Monthly payments of retirement allowances.
 93-1126. Exemption from taxes and execution.
 93-1127. Nomination of beneficiary.
 93-1128. Service in the armed forces of the United States.
 93-1129. Fraud—correction of errors.
 93-1130. Call of retired judge for duty.
 93-1131. Optional retirement allowance.
 93-1132. Transfer of dormant accounts to pension accumulation fund.

93-1101. (8877) Subsequent applications for orders refused, etc.

Disqualification of Judge

Motion for disqualification of judge was a flagrant abuse of this section where affidavit was filed three weeks subse-

quent to denial of petition for restoration to capacity and petition for restoration was again filed and oral argument heard on same evidence, resulting in

granting of petition for restoration; writ of supervisory control was issued ordering grant of guardian's motion to quash second petition. Application of Stewart, — M —, 517 P 2d 879.

References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-1102. (8878) Violations of preceding section.

Frivolous Appeal

Where attorney specified as error in his appellate brief in a second action, the same point raised in his complaint in a previous action involving the same parties,

the appeal was frivolous and damages were assessed in favor of the respondents. Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-1107. Judges' retirement system—definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions"—the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary"—shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired judge"—any person in receipt of a retirement allowance under this act.

"Board"—the Montana judges' retirement board.

"Penalty retirement age"—seventy (70) years of age.

"Contributor"—any person who has accumulated deductions in the fund standing to his credit.

"Final salary"—the annual current salary for the office retired from.

"Actuarial equivalent"—the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Fund"—the Montana judges' retirement fund.

"Involuntary retirement"—a retirement not for cause and before retirement age.

"Member's annuity"—payments for life derived from contributions made by the contributor.

"Retirement allowance"—the state annuity plus the member's annuity.

"State annuity"—payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 289, L. 1967; amd. Sec. 1, Ch. 218, L. 1969; amd. Sec. 1, Ch. 251, L. 1975.

Compiler's Notes

Chapter 218, Laws 1969 was passed by the constitutional majority of both houses of the 41st legislative assembly over the veto of the governor.

Title of Act

An act relating to the judicial department of the state of Montana; providing

for the retirement of district judges and justices of the supreme court, subject to thereafter being called into service for the performance of certain judicial duties under the direction of the supreme court and providing an allowance of actual expenses for such service; defining the terms used in this act; establishing a Montana judges' retirement system; creating a Montana judges' retirement board; providing for payment of the expense of administering this act, and for payments into the Montana judges' retirement fund;

providing for the establishment and enforcement of rules and regulations; requiring membership in public employees' retirement system and for payments thereto by each judge not heretofore a member thereof; providing a service allowance based on length of service; requiring payments into the Montana judges' retirement fund by deductions from members' salaries; providing for contributions by the state of Montana, and for payment into the Montana judges' retirement fund of one-quarter of fees collected by clerks of district court and by the clerk of the supreme court; specifying length of service and age requirements necessary for retirement; providing the method of computing retirement allowance; providing for a disability retirement allowance and an involuntary retirement allowance; specifying penalty retirement age and providing for a retirement allowance forfeiture; providing for

payments upon death; providing for monthly payments of retirement allowances, for exemption from taxes and execution, for nomination of beneficiary, and for options available to judges entering military service; providing certain optional methods of payment of retirement allowance; providing for transfer of accounts dormant for ten (10) years; and providing a savings clause declaring the provisions of this act to be severable.

Amendments

The 1969 amendment rewrote the definition of "Final salary" which was formerly defined as "the annual current salary for the office retired from."

The 1975 amendment inserted "current" before "salary" in the definition of "Final salary"; and deleted "as of the date of retirement" from the end of the definition of "Final salary."

93-1108. Repealed.

Repeal

Section 93-1108 (Sec. 2, Ch. 289, L. 1967), relating to establishment of the

Montana judges' retirement system, was repealed by Sec. 103, Ch. 326, Laws of 1974.

93-1109. [Transferred.]

Compiler's Notes

Section 96, Ch. 326, Laws of 1974 renumbered this section as sec. 82A-210.2.

93-1110. Administrative expenses. (1) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits, shall be paid from the Montana judges' retirement account.

(2) Before July 15, 1970 and before July 15 of each year thereafter, the board shall compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the Montana judges' retirement account to the public employees' retirement system account in the earmarked revenue fund.

History: En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969.

Amendments

The 1969 amendment designated the former section as subsection (1), and

substituted "from the Montana judges' retirement account" for "by the state of Montana, by appropriation out of the general fund, made on the basis of budgets submitted by the board" at the end and added subsection (2).

93-1111. Payments into the Montana judges' retirement fund—investment. All appropriations made by the state of Montana, all contributions by members of the Montana judges, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the secretary of the public employees' retirement system board (PERS), who shall credit said payments to the Montana judges' retirement fund. Said funds may be co-mingled with funds of the PERS, but shall be earmarked as judges' retirement fund.

History: En. Sec. 5, Ch. 289, L. 1967.

93-1112. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 289, L. 1967.

93-1113. Membership. (a) Any judge or justice, who has, previous to the adoption of this act, been a member of the PERS, may elect to remain under that system; such election to be made in writing to the PERS board within three (3) months after the effective date of this act.

(b) Every judge or justice who was in service in either a district court or a supreme court of the state of Montana, prior to July 1, 1967, shall have the option and he may elect to make back payments to the date when he first entered the service of the judiciary. Such back payments may be spread over a period of five (5) years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by sixty (60), which deduction increase shall be credited to such back payments owing, and shall be continued until the full amount of such back payments shall have been completed. Any such deduction increase may be anticipated in part or in full by the contributor at any time and must be anticipated in full at the time of retirement before a retirement allowance is granted, and if not so anticipated and paid in full then a member's retirement allowance shall be calculated for the total years and months on which contributions have been made in accordance with section 12 [93-1118] of this act. Every contributor who shall elect to make such back payments shall receive full credit under this act for all contributions made into the fund and for all service credits to which he might thereby be entitled.

History: En. Sec. 7, Ch. 289, L. 1967.

93-1114. Service allowance. In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the judiciary including service rendered prior to July 1, 1967, upon complying with the provisions of this act. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1967. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor.

History: En. Sec. 8, Ch. 289, L. 1967.

93-1115. Payments by contributors. Every member shall be required to contribute into the fund a sum equal to six per cent (6%) of his monthly salary, which sum shall be deducted from his salary and credited to his account in the fund.

History: En. Sec. 9, Ch. 289, L. 1967.

93-1116. Contributions by the state of Montana. The state of Montana shall monthly contribute to the fund a sum equal to six per cent (6%) of the salary of each member of the Montana judiciary retirement system. In addition to the above, three-quarters ($\frac{3}{4}$) of the fees collected under section 25-232, as amended, and section 25-233, as amended, shall be paid into the county treasurer on the first Monday of each month as provided in section 25-203, and the other one-quarter shall be transmitted by the clerk to the secretary of the PERS board on the first Monday of each month, and by him credited to the judicial retirement fund. The fees collected under section 82-503, as amended, shall be by the clerk of the supreme court paid by him, three-quarters ($\frac{3}{4}$) into the state treasury to be credited to the general fund, and one-quarter ($\frac{1}{4}$) of which shall be paid by him to the secretary of the PERS board, which shall be credited to the credit of the judicial retirement fund. The full amount of such fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the accrued retirement and expenses provided for herein.

History: En. Sec. 10, Ch. 289, L. 1967.

93-1117. Vesting of proportional retirement. Any member who has completed at least five (5) years or more service, and has reached the age of sixty-five (65), may retire and receive the proportional retirement allowances provided in section 12 [93-1118].

History: En. Sec. 11, Ch. 289, L. 1967.

93-1118. Retirement allowance. Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of three and one-third per cent ($3\frac{1}{3}\%$) per year of his final salary for the first fifteen (15) years' service, and one per cent (1%) per year for each year's service thereafter.

History: En. Sec. 12, Ch. 289, L. 1967.

93-1119. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided, that if such total disability

is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half ($\frac{1}{2}$) of his final salary or the allowance provided in section 12 [93-1118], whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of sixty (60) years, the maximum monthly payment shall be the retirement allowance as provided in section 12 [93-1118].

History: En. Sec. 13, Ch. 289, L. 1967.

93-1120. Involuntary retirement allowance. (1) Should a contributor be discontinued from service, not voluntarily, after having completed five (5) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows:

(a) the full amount of accumulated deductions standing to his credit; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit; or

(2) Should a contributor be discontinued from service, not voluntarily, after having completed twelve (12) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows:

(a) the full amount of accumulated deductions standing to his credit; or

(b) the member's annuity which shall be the actuarial equivalent of the contributor's aggregate contributions standing to his credit, plus the state annuity which shall be an amount which when added to the member's annuity will provide a total annuity equal to the allowance provided for in section 93-1118.

History: En. Sec. 14, Ch. 289, L. 1967;
amd. Sec. 1, Ch. 89, L. 1975.

Amendments

The 1975 amendment inserted the subsection (1) designation; and added subsection (2).

93-1121. Penalty retirement allowance. Any judge or justice who becomes eligible for retirement hereunder, but fails to make application therefor, prior to his attaining the age of seventy (70) years, shall automatically waive all retirement benefits, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him; save and except that any judge or justice, who is over the age of seventy (70) years, at the time of the effective date of this act, or who shall attain such age before the expiration of his term, shall be permitted to serve out the balance of his existing term, without forfeiting said retirement. At the termination of the said existing term, if such member has failed to make

application for retirement under this act, he shall automatically waive all retirement benefits hereunder, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him.

History: En. Sec. 15, Ch. 289, L. 1967.

Compiler's Notes

This act became effective July 1, 1967.

93-1122. Refunds in case of resignation or discharge. Where a contributor resigns of his own volition, or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 289, L. 1967.

93-1123. Payments upon death. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of:

(a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to the allowance provided for in section 12 [93-1118].

History: En. Sec. 17, Ch. 289, L. 1967.

93-1124. Payments in case of death from natural cause. (a) If the retired judge or justice dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 14 [93-1120].

History: En. Sec. 18, Ch. 289, L. 1967.

93-1125. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana. No retirement allowances can be approved by the board while the member is drawing full compensation as a judge or justice.

History: En. Sec. 19, Ch. 289, L. 1967.

93-1126. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 289, L. 1967.

93-1127. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board.

History: En. Sec. 21, Ch. 289, L. 1967.

93-1128. Service in the armed forces of the United States. Any member of the Montana judiciary now in or hereafter inducted into the armed forces of the United States, shall have the option:

(a) to continue his payments into the fund; or

(b) allow the board to make his payments for him during such military service, in which event he shall repay the fund the full amount of such payments upon his return to the Montana judiciary, and such repayments must be made within two (2) years after his return to the judiciary provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 289, L. 1967.

93-1129. Fraud—correction of errors. (a) No person shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(b) Should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) or suffer imprisonment not exceeding one (1) year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 289, L. 1967.

93-1130. Call of retired judge for duty. Every judge or justice receiving retirement pay under the provisions of this act, shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court or any district court under such directions as the supreme court may give, including the examination of the facts and cases before the court, the examination of authorities cited and the preparation of opinions for and on behalf of the court, which opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court and such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases in so far as not inconsistent with the constitution of the state. Such retired judge or justice when called

to service as herein provided shall be reimbursed for his actual expenses, if any, in responding to such call.

History: En. Sec. 24, Ch. 289, L. 1967.

93-1131. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement, allowance, payable throughout life with one of the following options:

Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 2. Upon his death, one-half ($\frac{1}{2}$) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 3. Such other benefit or benefits shall be paid, either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 25, Ch. 289, L. 1967.

93-1132. Transfer of dormant accounts to pension accumulation fund. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years, provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 27, Ch. 289, L. 1967.

Separability Clause

Section 26 of Ch. 289, Laws 1967 read "The provisions of this act are severable, and, if any of its provisions shall be held to be unconstitutional, the decision of the

court shall not affect or impair any of the remaining provisions. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein."

CHAPTER 12—JURIES—DIFFERENT KINDS DEFINED

Section 93-1205. Number of a trial jury.

93-1205. (8887) Number of a trial jury. A trial jury consists of twelve (12) persons; provided, that in civil actions and cases of misdemeanor, it may consist of twelve (12), or any number less than twelve

(12), upon which the parties may agree in open court, and further provided that in all civil actions where the relief asked for in the complaint is under the sum of ten thousand dollars (\$10,000), then a trial jury may in the discretion of the trial judge consist of six (6) persons, and that two-thirds ($\frac{2}{3}$) of the jury may render a verdict; provided further, that where a six (6) person jury is authorized by law, each side shall have two (2) peremptory challenges, and they shall be exercised by the plaintiff first striking one (1), and the defendant then striking one (1), and so on, until each side has exhausted or waived his rights.

History: En. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R. C. M. 1921; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971. Cal. C. Civ. Proc. Sec. 194.

Amendments

The 1971 amendment added the second and third provisos; and made minor changes in style.

93-1206. (8888) Juries in justices' courts.

Cross-References

Formation of criminal trial jury in justice or police court, sec. 95-2005.

Trial of criminal cases in justice and police courts, sec. 95-2004.

CHAPTER 13—JURORS—QUALIFICATIONS AND EXEMPTIONS

Section 93-1301. Who competent to act as juror.

93-1304. Who exempt from jury duty.

93-1301. Who competent to act as juror. A person is competent to act as a juror if he is a registered elector whose name appears on the most recent list of all registered electors as prepared by the county registrar.

History: Earlier statutes were Sec. 8, p. 506, Cod. Stat. 1871; amd. Sec. 1, p. 70, L. 1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 57, L. 1881; re-en. Sec. 1304, 5th Div. Comp. Stat. 1887; re-en. Sec. 230, C. Civ. Proc. 1895; re-en. Sec. 6337, Rev. C. 1907; re-en. Sec. 8890, R. C. M. 1921; amd. Sec. 6, Ch. 203, L. 1939; amd. Sec. 1, Ch. 116, L. 1965; amd. Sec. 20, Ch. 240, L. 1971; amd. Sec. 32, Ch. 94, L. 1973; amd. Sec. 2, Ch. 298, L. 1975. Cal. C. Civ. Proc. Sec. 198.

The 1971 amendment reduced the minimum age specified in subdivision 1 from 21 to 19 years; and made minor changes in style.

The 1973 amendment reduced the minimum age specified in subdivision 1 from nineteen to eighteen years.

The 1975 amendment substituted the current section for a specific list of qualifications. For prior version, see parent volume and prior amendment notes.

Amendments

The 1965 amendment deleted "and not more than seventy" after "age of twenty-one" in paragraph 1.

Repealing Clause

Section 2 of Ch. 116, Laws 1965 repealed all acts and parts of acts in conflict therewith.

93-1304. (8893) Who exempt from jury duty. A person is exempt from liability to act as juror if:

1. * * * [Same as parent volume.]
2. A person holding a public office in the state, a county, township, or town;
3. to 6. * * * [Same as parent volume.]
7. An officer, keeper or attendant of a hospital, asylum, or other charitable institution;
8. and 9. * * * [Same as parent volume.]

10. An active member of the national guard of Montana, or an active member of a fire department of any city or town of this state. The number of firemen hereby exempted must not exceed twenty-eight (28), including officers for each company organized; and such members from each company must be selected from the roll of such company, according to the seniority of membership, and a list containing the names of such persons must be made out by the secretary of each company and filed with the clerk of the board of county commissioners on the first Mondays of December, March, June and September, and any failure to file the list hereby required is considered a waiver of such exemption.

11. and 12. * * * [Same as parent volume.]

The court must discharge a person from serving as a trial juror, in either of the following cases:

Where it satisfactorily appears that he or she is not competent; and,

Where it satisfactorily appears that he or she is exempt and claims the benefit of exemption.

History: Ap. p. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en. Sec. 8893, R. C. M. 1921; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1,

Ch. 425, L. 1971. Cal. C. Civ. Proc. Sec. 200.

Amendments

The 1971 amendment inserted "in the state" in subdivision 2; deleted "alms-house" in subdivision 7; and made minor changes in phraseology and style.

CHAPTER 14—JURORS—SELECTION AND RETURN

Section 93-1402. Selection of persons qualified to serve as trial jurors.

93-1404. Duty of clerk—jury boxes.

93-1402. (8897) Selection of persons qualified to serve as trial jurors.

At the meeting, specified in the last section, the officers present must select, from the most recent list of all registered electors as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in the last chapter. Each name so appearing on said list shall be assigned a number which shall be placed opposite the name on the jury list and shall be considered the number of the juror opposite whose name it appears. Said numbers shall be consecutive from "1" to the total number of jurors.

History: En. Sec. 241, C. Civ. Proc. 1895; re-en. Sec. 6343, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1919; re-en. Sec. 8897, R. C. M. 1921; amd. Sec. 1, Ch. 168, L. 1957; amd. Sec. 1, Ch. 298, L. 1975.

Amendments

The 1975 amendment substituted "most recent list of all registered electors as prepared by the county registrar" for "last assessment roll of the county" in the first sentence.

93-1404. (8899) Duty of clerk—jury boxes. The clerk shall prepare and keep a jury box and contents as follows: The number of each juror shall be written, typed or stamped on paper or other suitable material, identical in all respects, and placed in a box of ample size to permit said numbers to be thoroughly mixed, and which said box shall be kept for that purpose and shall be known as, and plainly marked, "jury box

No. 1." The numbers may be used as often as necessary; provided, however, none shall be used which is in any manner whatsoever defaced or disfigured, or so marked that it may be recognized or distinguished from the others in said jury box No. 1 except by the number thereon. There shall be so enclosed in said box one number, and only one number, corresponding to the number before the name of each juror on the jury list.

History: En. Sec. 243, C. Civ. Proc. 1895; re-en. Sec. 6345, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1919; re-en. Sec. 8899, R. C. M. 1921; amd. Sec. 2, Ch. 168, L. 1957; amd. Sec. 1, Ch. 110, L. 1969. Cal. C. Civ. Proc. Sec. 209.

Amendments

The 1969 amendment deleted "and en-

closed in separate black capsules" after "suitable material"; substituted references to "numbers" for references to "capsules" wherever appearing; and, in the last sentence, substituted "number before the name of each juror" for "corresponding to the name of each juror."

DECISIONS UNDER FORMER LAW

Color of Capsules

Identical opaque capsules, though not black as formerly required by statute, were not such deviation as to constitute material departure from provisions of statute since the price of black capsules was approximately five times that of other avail-

able capsules, and hence an additional burden on taxpayer, and since no unfairness in selection of jurors would result from using another opaque colored capsule. In re Jury Box Capsules, 150 M 583, 447 P 2d 687.

CHAPTER 15—JURORS—DRAWING AND SUMMONING FOR COURTS OF RECORD

Section 93-1503. Drawing—how conducted.

93-1512. Drawing additional jurors when original number insufficient—order designating number needed—selection from portion of county only—notification of jurors.

93-1503. (8904) Drawing — how conducted. 1. The clerk must place said box on a rod so that the same may readily revolve and said box must be revolved a sufficient number of times so as to ensure that the numbered slips in said box shall become thoroughly mixed, and thereafter the judge must draw from said box one (1) at a time, as many of the numbered slips as are ordered by the court.

2 and 3. * * * [Same as parent volume.]

4. No person shall be asked to serve on more than one term during any year unless all the numbers in jury box No. 1 have been drawn and there are no other qualified jurors available.

History: En. Sec. 262, C. Civ. Proc. 1895; re-en. Sec. 6350, Rev. C. 1907; amd. Sec. 2, Ch. 35, L. 1919; re-en. Sec. 8904, R. C. M. 1921; amd. Sec. 1, Ch. 148, L. 1933; amd. Sec. 2, Ch. 151, L. 1937; amd. Sec. 2, Ch. 3, L. 1939; amd. Sec. 4, Ch. 168, L. 1957; amd. Sec. 2, Ch. 110, L. 1969. Cal. C. Civ. Proc. Sec. 219.

Amendments

The 1969 amendment, in subsection (1), twice substituted "numbered slips" for "capsules," the latter referring to separate black capsules containing each juror's number; substituted "the" for "such" before the last reference to "numbered slips"; and added subsection (4).

93-1504 to 93-1506. (8905 to 8907) Repealed.

Repeal

Sections 93-1504 to 93-1506 (Secs. 263 to 265, C. Civ. Proc. 1895; Secs. 3 to 5, Ch. 35, L. 1919; Sec. 2, Ch. 148, L. 1933;

Secs. 5 to 7, Ch. 168, L. 1957), relating to the drawing of jurors from jury boxes Nos. 2 and 3, were repealed by Sec. 4, Ch. 110, Laws 1969.

93-1510, 93-1511. (8911, 8912) Repealed.**Repeal**

Sections 93-1510 and 93-1511 (Secs. 281, 282, C. Civ. Proc. 1895; Secs. 8, 9, Ch. 168, L. 1957), relating to the drawing and summoning of jurors, were repealed by Sec. 4, Ch. 110, Laws 1969.

93-1512. Drawing additional jurors when original number insufficient—order designating number needed—selection from portion of county only—notification of jurors. Whenever it appears to a district judge that additional jurors will be needed for any term or trial the judge shall draw as many numbers from jury box No. 1 as are necessary to secure the required number of additional jurors. Before drawing the numbers the judge shall by appropriate order designate the number of jurors needed, and, when the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense then he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order then that number shall be returned to the jury box and a new number drawn. When the required number of names have been selected the judge may order the prospective jurors notified by telephone by the clerk of the court or he may order them summoned by the sheriff either by certified mail or by personal service.

History: En. Sec. 3, Ch. 110, L. 1969.

ing sections 93-1504, 93-1505, 93-1506, 93-1510 and 93-1511, R. C. M. 1947.

Title of Act

An act amending sections 93-1404 and 93-1503, R. C. M. 1947, to provide for a change in the method of drawing jurors and to eliminate the jury boxes numbered two and three and to provide for a change in the method of notifying jurors; repeal-

Repealing Clause

Section 4 of Ch. 110, Laws 1969 read "Sections 93-1504, 93-1505, 93-1506, 93-1510, and 93-1511, R. C. M. 1947, are repealed."

CHAPTER 16—JURORS—SUMMONING FOR JUSTICES' AND INFERIOR COURTS AND COURTS OF INQUEST

Section 93-1602. How to be summoned.

93-1602. (8914) How to be summoned. Such jurors must be summoned from the persons competent to serve as jurors, residents of the county, city, or town in which such court has jurisdiction, by notifying them orally that they are summoned, and of the time and place at which their attendance is required.

History: En. Sec. 291, C. Civ. Proc. 1895; re-en. Sec. 6360, Rev. C. 1907; re-en. Sec. 8914, R. C. M. 1921; amd. Sec. 14, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 231.

Amendments

The 1973 amendment substituted "county" for "township."

CHAPTER 18—JURIES—HOW IMPANELED—ALTERNATES

Section 93-1801. Grand jury—when and how to be impaneled.

93-1802. How constituted.

93-1801. (8918) Grand jury—when and how to be impaneled. Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of such jurors to be drawn, which must not be less than fifteen (15) nor more than twenty (20). The names of such jurors must be drawn from jury box No. 1, mentioned in section 93-1404, and the list of names certified and summoned, as provided for drawing and summoning trial jurors, and the names of any persons drawn who may not be impaneled upon the grand jury must be again placed in said jury box No. 1.

History: En. Sec. 320, C. Civ. Proc. 1895; re-en. Sec. 6364, Rev. C. 1907; re-en. Sec. 8918, R. C. M. 1921; amd. Sec. 4, Ch. 3, L. 1973. Cal. C. Civ. Proc. Sec. 241.

Amendments

The 1973 amendment increased the number of jurors specified in the second sentence from not less than ten nor more than fifteen to not less than fifteen nor more than twenty.

93-1802. (8919) How constituted. When, of the persons summoned as grand jurors competent and not excused, eleven (11) are present, they constitute the grand jury. If more than eleven (11) of such persons are present, the clerk must write their names on separate ballots, and place the ballots in black capsules, which the capsules shall be deposited in a box large enough to hold all of the capsules without crowding, and which the box shall be so arranged that the clerk drawing the capsules from the box shall be unable to observe or see the capsule he is about to draw, and draw out eleven (11) of them, and the persons whose names are on the ballots so drawn shall constitute the grand jury. If less than eleven (11) of such persons are present, the court may order a sufficient number to be forthwith drawn from either box and summoned to attend the court. And whenever, of the persons to complete a grand jury, more attend than are required, the requisite number must be obtained by writing the names of those so summoned and not excused on ballots, which the ballots shall be placed in black capsules, and thereafter deposited in a box, and then drawn as above provided.

History: En. Sec. 321, C. Civ. Proc. 1895; re-en. Sec. 6365, Rev. C. 1907; amd. Sec. 7, Ch. 35, L. 1919; re-en. Sec. 8919, R. C. M. 1921; amd. Sec. 5, Ch. 3, L. 1973. Cal. C. Civ. Proc. Sec. 242.

Amendments

The 1973 amendment increased the number of jurors specified from seven to eleven in four places; and made minor changes in phraseology.

93-1803. (8920) Manner of impaneling grand jury prescribed.

Compiler's Notes

Sections 94-6301 to 94-6319 referred to in this section, were repealed by Sec. 2,

Ch. 196, Laws of 1967. For new law, see sections 95-1401 to 95-1409.

CHAPTER 19—COURT REPORTERS

Section 93-1906. Salary and expenses of reporter—apportionment.

93-1903. (8930) Matters written out and filed.

Compiler's Notes

Section 93-5505, referred to in this sec-

tion in the parent volume, was superseded by M. R. App. Civ. P., Rules 9, 10, and 25.

93-1906. (8933) Salary and expenses of reporter — apportionment.

Every reporter appointed under the provisions of this chapter is entitled to receive an annual salary of not less than twelve thousand five hundred dollars (\$12,500) and not more than sixteen thousand dollars (\$16,000) said salary to be set by the judge in the district in which the reporter works, and no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The reporter is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary.

History: En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1927; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955; amd. Sec. 6, Ch. 22, L. 1961; amd. Sec. 1, Ch. 114, L. 1965; amd. Sec. 1, Ch. 221, L. 1967; amd. Sec. 1, Ch. 192, L. 1969; amd. Sec. 1, Ch. 183, L. 1973; amd. Sec. 1, Ch. 373, L. 1975. Cal. C. Civ. Proc. Secs. 271 and 274.

Amendments

The 1965 amendment increased the sal-

ary set forth near the beginning of the section from \$6,600 to \$7,800.

The 1967 amendment increased the annual salaries of court reporters from \$7,800 to \$8,800.

The 1969 amendment increased annual salaries of court reporters from \$8,800 to \$9,200.

The 1973 amendment increased the reporter's annual salary from \$9,200 to \$12,500.

The 1975 amendment increased the annual salary from \$12,500 to not less than \$12,500 and not more than \$16,000; and inserted "said salary to be set by the judge in the district in which the reporter works."

CHAPTER 20—ATTORNEYS—QUALIFICATIONS—ADMISSION—LICENSE AND DISBARMENT

Section 93-2001. Who may be admitted as attorneys.

93-2014. Compensation and expenses of members of the board.

93-2001. (8936) Who may be admitted as attorneys. Any citizen or person, resident of this state, who has bona fide declared his or her

intention to become a citizen in the manner required by law, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all the courts of this state. All persons are attorneys of the supreme court who are entitled to practice in the supreme court when this code takes effect.

History: Earlier acts relating to admission and powers of attorneys were Secs. 1-15, pp. 370-373, Bannack Stat.; re-en. Secs. 1-15, pp. 375-378, Cod. Stat. 1871; re-en. Secs. 40-54, 5th Div. Rev. Stat. 1879; re-en. Secs. 102-116, 5th Div. Comp. Stat. 1887.

This section en. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en.

Sec. 8936, R. C. M. 1921; amd. Sec. 11, Ch. 168, L. 1971. Cal. C. Civ. Proc. Sec. 275.

Amendments

The 1971 amendment deleted "of the age of twenty-one years" from the first sentence.

93-2002. (8937) Qualifications, examination and admission.

Compiler's Notes

Chapter 342, Laws 1974, purported to amend this section. However, on June 21, 1974, the Montana Supreme Court held the purported amendment unconstitutional and void. See annotation to In re Senate Bill No. 630, below.

Constitutionality

Grant of diploma privilege to graduates of University of Montana law school while requiring graduates of other accredited schools to take bar examination did not constitute an unconstitutional denial of equal protection of laws. Goetz v. Harrison, 154 M 274, 462 P 2d 891.

Diploma privilege accorded graduates of University of Montana law school does not violate the equal protection clause of the fourteenth amendment and does not impinge upon fundamental right of interstate travel. Huffman v. Montana Supreme Court, 372 F Supp 1175.

Diploma Privilege

Familiarity of supreme court justices with University of Montana law school

and its faculty and students justifies continuation of practice of admitting graduates without examination. Goetz v. Harrison, 154 M 274, 462 P 2d 891.

Judicial Power

Under paragraph (3), section 2, article VII of the 1972 constitution, the supreme court has exclusive power to make rules governing admission to the bar and the conduct of its members, and the purported amendment of this section by Chapter 342, Laws of 1974, was patently void and in contravention of the principle of separation of powers set forth in section 1, article III of the 1972 constitution. In re Senate Bill No. 630, — M —, 523 P 2d 484.

Jurisdiction of District Court

District court had no jurisdiction of an action contesting the validity of this section and seeking restraining order against members of supreme court in their official capacity. Goetz v. Harrison, 153 M 403, 457 P 2d 911.

93-2005. (8940) Admission of attorneys from other states.

Applicability to Administrative Proceedings

This section is applicable to administrative proceedings under the supervision

of the supreme court. Application of American Smelting & Refining Co., — M —, 520 P 2d 103.

93-2014. (8949) Compensation and expenses of members of board. The members of said board shall be entitled to their travel expenses in attending meetings of said board and in conducting such examination, and also, when away from their homes or places of residence, as provided for in sections 59-538, 59-539, and 59-801, and shall be paid such compensation for services performed by them as members of said board, as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949, R. C. M. 1921; amd. Sec. 82, Ch. 147, L. 1963; amd. Sec. 63, Ch. 349, L. 1975.

Amendments

The 1975 amendment substituted "travel expenses" for "necessary traveling expenses"; substituted "as provided for in

sections 59-538, 59-539, and 59-801" for "their necessary lodging and hotel expenses"; and deleted "per diem" before "for services performed."

Repealing Clause

Section 64 of Ch. 439, Laws 1975 read "Section 59-802, R. C. M. 1947, is repealed."

93-2026. (8961) Disbarment of attorneys—causes—jurisdiction.

Conviction of Crime

Conviction by a jury in a federal court of the offense of devising and intending to devise a scheme to defraud and to obtain money by means of false and fraudulent pretenses warranted attorney's disbarment. In re Gross, 160 M 506, 503 P 2d 995, certiorari denied in 410 US 991, 93 S Ct 1503.

Disbarment

Although the recommendations of the commission are given careful consideration, the recommendation of indefinite suspension was rejected for attorney who admitted to violations involving moral turpitude with no proof of mental disease or defect, and disbarment was ordered. In the Matter of John C. Hall, — M —, 530 P 2d 456.

Misappropriation

The conduct of an attorney in opening a checking account in the name of an estate of which he had been appointed executor and making withdrawals for his personal use constituted deceit and malpractice involving moral turpitude. In re O'Donnell, 143 M 51, 387 P 2d 303.

Moral Delinquencies in General

Disbarment was justified for attorney who had been previously disciplined by

reprimand and who, after having been charged with debauching young girl, represented her procurer in criminal proceedings, represented both parties in procurer's divorce action, represented girl in quashing affidavit after procurer had married her, and represented another defendant charged with raping the girl. In re Keast, 159 M 311, 497 P 2d 103.

Moral Turpitude

Failure of attorney to make return of employees' withholding taxes was offense involving moral turpitude under this section so as to justify indefinite suspension from practice. In re Kline, 156 M 177, 477 P 2d 881.

Even though an act falls short of an offense involving moral turpitude under case law prior to adoption by the supreme court of the canons of professional ethics, it may justify disbarment. Even though an individual act or omission may in and of itself be insufficient grounds for action, repeated violations establishing a pattern of conduct revealing a gross disregard for the highest standards of honesty, justice or morality may and should be grounds for disbarment, suspension, censure or a request for surrender of license to practice law. In re Advisory Opinion to Commission on Practice, 156 M 514, 495 P 2d 1128.

CHAPTER 21—ATTORNEYS—POWERS—DUTIES—LIABILITIES AND COMPENSATION

93-2102. (8975) Change of attorney.

Death of Client

Attorney was authorized to represent deceased client for whom there was filed a praecipe signed by counsel indicating withdrawal of previous counsel and re-

questing entry of name of new attorney for deceased even though signed and filed by counsel after death of client. State ex rel. Ross v. District Court, Fourth Judicial Dist., 150 M 233, 433 P 2d 778.

93-2104. (8977) Death or removal of attorney.

Withdrawal of Attorney

Adverse party was not required to advise the opposite party to appoint another lawyer or appear for himself where

the opposite party's lawyer, with the consent of that party, withdrew from the case. Sikorski & Sons, Inc. v. Sikorski, — M —, 512 P 2d 1147.

93-2106. (8979) Punishment for willful delay.**Actual Damages**

Under this section, only actual damages may be trebled, not the statutory interest due. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

Fiduciary Duty

Where attorney paid off client's mort-

gage with stipulation to receive client's inheritance when it came due, failure to give money to client under transaction, which was a breach of attorney's fiduciary duty, subjected attorney to treble damages. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

93-2112. (8985) Former public prosecutors not to defend, etc.**DECISIONS UNDER FORMER LAW****New Trial**

Under a repealed section prohibiting attorneys from defending prosecutions carried on formerly by themselves, convicted petitioner was not entitled to new trial merely on ground his voluntarily hired counsel had prosecuted him four years before, where petitioner at all times knew that his counsel was such former prosecutor, and where the trial at hand had no relation to any official duty performed by his counsel as prosecutor. In re *Petition of Allen*, — M —, 507 P 2d 1049.

Separate Charges

Appointment, as defense counsel, of attorney who had successfully prosecuted

defendant on another charge over seven years earlier was not a violation of defendant's constitutional rights; prosecution of an individual by a former county attorney did not forever prohibit that attorney from defending that individual on a separate and distinct criminal charge. *Petition of Pepperling*, — M —, 508 P 2d 569.

Waiver

Defendant who had choice of defense counsel and chose attorney who had prosecuted him in earlier case, waived any right to demand new trial based on such representation. *State v. Gallagher*, — M —, 509 P 2d 852.

93-2120. (8993) Lien for compensation.**Obligations of Third Parties**

Fact that settlement of personal injury claim by attorneys for their client incidentally benefited hospital by creating fund from which its bill for treatment of client could be paid did not create an implied contract by hospital to pay attorneys for their services; neither was hospital obligated to share settlement proceeds on a subrogation theory. *Sisters of Charity of Providence of Montana v. Nichols*, 157 M 106, 483 P 2d 279.

Priority of Liens

Where settlement in personal injury case was paid in three drafts, lien of attorneys representing injured party attached to all three drafts; since amount of drafts was sufficient to satisfy attorneys' fees in full, previously subordinate hospital lien became the senior outstanding lien against the balance of the settlement proceeds notwithstanding that attorneys did not actually collect their fees; attorneys and injured party could not require payment of a prorata share of attorneys' fees from that portion of

settlement proceeds otherwise payable to hospital under its lien rights. *Sisters of Charity of Providence of Montana v. Nichols*, 157 M 106, 483 P 2d 279.

Unemployment Compensation Cases

This section being in conflict with sections 87-142 and 87-143, relating to unemployment compensation claims, the latter sections, being more specific, should control over this section, which is more general, especially where, in light of the services rendered, the attorney's fees could be considered "necessaries" under section 87-143. *McAlear v. Unemployment Compensation Commission*, 145 M 458, 405 P 2d 219.

Waiver of Lien

Failure of attorney to deduct expenses incurred in obtaining award in case and his expressed intention that he would collect expenses from future settlements constituted waiver of his lien for expenses. *Gross v. Holzworth*, 151 M 179, 440 P 2d 765.

CHAPTER 25—LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY

Section 93-2504. Seizin within five years—when necessary in actions for real property.

93-2504. (9015) Seizin within five years—when necessary in actions for real property. No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action.

History: Ap. p. Sec. 29, p. 45, L. 1877; re-en. Sec. 29, 1st Div. Rev. Stat. 1879; re-en. Sec. 29, 1st Div. Comp. Stat. 1887; amd. Sec. 483, C. Civ. Proc. 1895; re-en. Sec. 6432, Rev. C. 1907; re-en. Sec. 9015, R. C. M. 1921; amd. Sec. 1, Ch. 224, L. 1953; amd. Sec. 12, Ch. 263, L. 1975. Cal. C. Civ. Proc. Sec. 318.

Amendments

The 1975 amendment deleted a second sentence relating to action for recovery of dower. For prior text, see parent volume.

Public Highway

Public highway was established by prescription on evidence that members of public had used road openly for more than fifty years without ever having obtained permission from owners, that previous owner had considered road a public highway, that road had been maintained by county for some 24 years and that public had never been denied use of road. *Kostbade v. Metier*, 150 M 139, 432 P 2d 382.

93-2507. (9018) Possession—when presumed, etc.

Public Highway

Where county adversely paved and maintained a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land even though the private owner was assessed for and paid taxes on the property during the running of the statutory period. *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706.

Use for Less than Statutory Period

Adverse use for less than full statutory period of five years confers no right or interest upon the adverse user, so that there was no consideration for an alleged contract granting an easement over another route. *Larson v. Burnett*, 158 M 421, 492 P 2d 921.

93-2508. (9019) Occupation under written instrument or judgment, etc.

Possession under Color of Title

Rancher, who received administrator's deed purporting to convey land, which deed was reviewed by two attorneys who failed to note the discrepancy in the deed and which deed also misled the right-of-way department for a power company which paid the rancher \$800 for an underground pipeline easement across the tract, occupied the land under claim or color of title within meaning of this section. *Brown v. Cartwright*, — M —, 515 P 2d 684.

Tolling of Statute

Statute of limitations did not toll during period when Indian plaintiff was attempting to persuade the United States to bring action against vendee of Indian's land on grounds that sale was fraudulent. *Dillon v. Antler Land Co.*, 341 F Supp 734.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

93-2509. (9020) What constitutes adverse possession, etc.

Possession under Color of Title

Certificate of assignment given to person paying delinquent taxes on realty did not give that person color of title and

did not bring him within ambit of this section. *Magelssen v. Atwell*, 152 M 409, 451 P 2d 103.

93-2511. (9022) What constitutes adverse possession, etc.**Conflicting Evidence**

Finding of district court that adverse possession was not established was affirmed, in light of record disclosing conflicting testimony on question of existence and upkeep of fences and conflicting testimony on question whether and who ran livestock on property during the prescriptive period. *Johnson v. Silver Bow County*, 151 M 283, 443 P 2d 6.

Necessary Intent

No adverse possession was established where plaintiff did not, by any of actions, show requisite intent to possess adversely, particularly in view of letter in which plaintiff admitted that defendants owned the disputed land. *Magelssen v. Atwell*, 152 M 409, 451 P 2d 103.

93-2513. (9024) Occupancy and payment of taxes necessary, etc.**Burden of Proof**

The burden of proving all the essential elements of adverse possession is upon the party alleging it and he must prove that no taxes were levied or assessed against the land or that he has paid all taxes which were levied thereon. *Townsend v. Koukol*, 148 M 1, 416 P 2d 532, 536.

Easement

Where the county maintained and paved a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land and it was not necessary that the county pay taxes on the property during the statutory period. *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706.

Essential Elements

To constitute adverse possession, the possession must be actual, feasible, exclusive, hostile and continuous for the full period of years and the party asserting adverse possession must have paid all the taxes levied and assessed upon the property during the statutory period. *Townsend v. Koukol*, 148 M 1, 416 P 2d 532, 535, 536.

Payment of Taxes

Since filing of a quiet title action

freezes the respective rights of the parties at the time of the commencement of the action, party who sought to quiet title to land in himself was unable to establish his right to title by paying back taxes on land after commencement of the action where the adverse possessor had, prior to commencement of the action, occupied and claimed the land for a period of five years continuously and had paid all taxes assessed upon the land during that period. *Brown v. Cartwright*, — M —, 515 P 2d 684.

Sufficiency of Possession

In quiet title action, plaintiff's knowledge of adverse claimant's acceptance of consideration from power company for the granting of an easement, plaintiff's lack of dispute of ownership upon adverse claimant's offer to sell him the tract involved, adverse claimant's continued use of the tract, his employment of a surveyor and erection of a fence on the premises and plaintiff's allowing adverse claimant to pay taxes on the tract for five years, sufficiently established adverse claimant's possession during statutory period. *Brown v. Cartwright*, — M —, 515 P 2d 684.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

CHAPTER 26—LIMITATION OF OTHER ACTIONS

- Section 93-2604. Within five years.
 93-2607. Two-year limitation.
 93-2612. Actions relating to bond issues, time for bringing.
 93-2619. Action for damages arising out of or resulting from construction of improvements to real property—ten years.
 93-2620. Exception—injury occurring during tenth year.
 93-2621. Responsibility of person in control not affected.
 93-2622. Time of completion of improvements to real property.
 93-2623. Other limitation periods not extended.
 93-2624. Actions for medical malpractice.

93-2603. (9029) Within eight years.**Nonparticipating Oil Royalty**

Where wife agreed to properly settle-

ment granting her a percentage of royalties should oil ever be found on land, such

right did not vest until oil production began and her action for royalties was not barred by the fact that it had been

more than eight years since execution of the settlement. *Close v. Ruegsegger's Estate*, 143 M 32, 386 P 2d 739.

93-2604. (9030) Within five years. Within five years:

1. An action upon a contract, account, promise, not founded on an instrument in writing.
2. An action upon a judgment or decree rendered in a court not of record. The cause of action is deemed, in such case, to have accrued when final judgment was rendered.

History: En. Sec. 513, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 157, L. 1901; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6446, Rev. C. 1907; re-en. Sec. 9030, R. C. M. 1921; amd. Sec. 31, Ch. 263, L. 1975. Cal. C. Civ. Proc. Sec. 339.

Amendments

The 1975 amendment deleted former subdivision 2; and redesignated former subdivision 3 as subdivision 2. For prior version, see parent volume.

Damage to Building from Broken Water Pipes

This section did not apply to action by owners of apartment building against realtors for water damages to building from bursting of water pipes due to alleged negligence of realtors in caring for the building. The claim was barred by statute of limitations relating to injury to or waste or trespass on property, section 93-2607. *Quitmeyer v. Theroux*, 144 M

302, 395 P 2d 965, 969, 970. (Dissenting opinion, 144 M 302, 395 P 2d 965, 971.)

Decedents' Estates

Five-year-limitation period under this section did not include time between decedent's death and issuance of letters of administration to defendant. *Cartwright v. Joyce*, 155 M 478, 473 P 2d 515.

Partial Bar by Statute

Fact that plaintiff had been awarded full judgment for services rendered without regard to limitation period under this section did not require that entire verdict be set aside but only that the judgment be reduced by value of services rendered prior to five year period, since the claim was divisible. *Cartwright v. Joyce*, 155 M 478, 473 P 2d 515.

References

Hager v. Tandy, 146 M 531, 410 P 2d 447.

93-2605. (9031) Within three years.

Absence from State

Absence of alleged tort-feasor from state did not toll statute of limitations where it was possible to obtain service during the entire three-year period, under Rule 4D(2)(a) initially and under Rule 4D(3) after he left the state. *State ex rel. McGhee v. District Court, Sixteenth Judicial Dist., Fallon County*, — M —, 508 P 2d 130.

Amendment of Complaint

Three-year limitation for tort actions did not preclude amendment of complaint to correct misnomer by which defendant was referred to erroneously as Illinois corporation rather than as Delaware corporation; federal rule was applied in allowing the amendment. *Wentz v. Alberto Culver Co.*, 294 F Supp 1327.

Exhaustion of Administrative Remedies

Cause of action on statutory bond did not accrue until required administrative proceedings were complete and board had made final determination of amount due. *Montana Milk Control Board v. Hartford*

Accident & Indemnity Co., 153 M 299, 456 P 2d 302.

Fraudulent Concealment

Doctrine of fraudulent concealment was not applicable to medical malpractice case in which plaintiff alleged that doctor had failed to make a full disclosure of the experimental nature of the operation to be performed but admitted that he was informed in detail of the type of operation to be performed and that he consented to the operation and where, although doctor assured the plaintiff that he would be able to return to work within six months of the operation, plaintiff admitted to being totally disabled for six years after the operation and permanently partially disabled thereafter. *Monroe v. Harper*, — M —, 518 P 2d 788.

"Liability Created by Statute"

Action against county by motorist who alleged he suffered personal injuries in a single vehicle accident due to negligent failure of county to properly maintain and mark a "T" intersection of county

roads was subject to three-year statute of limitations under this section, rather than the two-year statute of limitations under 93-2607(1) as an action "upon a liability created by statute," since section 40-4402 waiving sovereign immunity to extent of county's liability insurance simply removes a defense previously available rather than creating a new cause of action. *State ex rel. Fallon County v. District Court, Sixteenth Judicial Dist., Fallon County*, 161 M 79, 505 P 2d 120.

Malpractice

Where sponge had been left in patient's body in operation performed ten years previously, patient's cause of action for malpractice did not accrue until patient learned that such foreign object was in his body. *Johnson v. St. Patrick's Hospital*, 148 M 125, 417 P 2d 469, 473.

93-2607. (9033) Two-year limitation. Within two years:

1. An action upon a liability created by statute other than a penalty or forfeiture.

2. An action for injury to or for waste or trespass on real or personal property; provided that, when the waste, trespass or injury is committed by reason of underground work upon any mining claim or seismic exploration, location, spacing, drilling, equipping, producing, or other operation related to exploration or production of oil, gas, water, geothermal, or other minerals, the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such waste, trespass, or injury.

3 to 5. * * * [Same as parent volume.]

History: En. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R. C. M. 1921; amd. Sec. 1, Ch. 423, L. 1975. Cal. C. Civ. Proc. Sec. 338.

Amendments

The 1975 amendment inserted "or injury" after "trespass" throughout subdivision 2; inserted "or seismic exploration, location, spacing, drilling, equipping, producing, or other operation relating to exploration or production of oil, gas, water, geothermal, or other minerals" in subdivision 2; and made minor changes in punctuation.

Claim and Delivery

In an action for claim and delivery, where possession by the defendant is rightful, the statute of limitations begins to run when the defendant refuses upon demand to return the property. *Interstate Mfg. Co. v. Interstate Products Co.*, 146 M 449, 408 P 2d 478.

Product Liability

Where plaintiff developed cataracts following use of defendant's drug, there was question of fact as to whether publicity connecting the drug and cataracts was sufficient to put plaintiff on notice as to cause of his cataracts, thus to start the statute running, and motion for summary judgment for defendant, based on statute of limitations, was denied. *Hornung v. Richardson-Merrill, Inc.*, 317 F Supp 183.

Wrongful Death

This section, rather than section 93-2607, applies to an action from wrongful death. *Bryant v. Hall*, 157 M 28, 482 P 2d 147, overruling *Smith v. Wiprud*, 154 M 325, 463 P 2d 317.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

Damage by Fire

Two-year statute of limitations under this section barred suit brought by the United States under section 82-1237 for damage to property caused by alleged negligence of defendants in setting forest fire. *United States v. Eytcheson*, 237 F Supp 371.

Damage to Building from Broken Water Pipes

Claim of owners of an apartment building against realtors for water damage to building from bursting of water pipes due to alleged negligence of realtors in caring for the building was barred by this section. Statute of limitations concerning implied contracts, section 93-2604, was inapplicable. *Quitmeyer v. Theroux*, 144 M 302, 395 P 2d 965, 969, 970. (Dissenting opinion, 144 M 302, 395 P 2d 965, 971.)

Fraud and Mistake

An action by administrator of estate of deceased against surviving partners to recover assets which had been transferred

by deceased during his last illness was timely filed on July 25, 1960 where fraud was not discovered until December 1, 1958. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

Action to rescind contract for sale of real estate was barred when not brought within two years after discovery of fraud by all parties concerned. *Rock v. Birdwell*, 149 M 449, 429 P 2d 634.

Quiet title action based on husband's fraud of wife's community property and instituted within two years of discovery of facts constituting fraud was timely even though brought as counterclaim. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

Trial court properly granted defendant's motion for summary judgment in action for fraudulent representation, or in alternative breach of contract, in sale of tractor since plaintiff's having failed to state claim in complaint for breach of contract made tort statute applicable and tort action was barred by this section. *Israelson v. Mountain Tractor Co.*, 155 M 69, 467 P 2d 149.

Where plaintiff developed cataracts following use of defendant's drug, evidence that wide publicity had been given to causal relationship between drug and cataracts did not establish that plaintiff was charged with knowledge of such relationship so as to constitute discovery under subsection 4 of this section. *Hornung v. Richardson-Merrill, Inc.*, 317 F Supp 183.

Injury to Personal Property

An action by an adoptive father and natural grandfather under section 93-2809 is an action for an injury to a pecuniary interest of the parent, therefore one for an injury to a property right which must be commenced within two years from the date the claim arose under subdivision 2 of this section. *LaTray v. Mannix Electric Co.*, 148 M 303, 419 P 2d 744, 745; but see *Bryant v. Hall*, 157 M 28, 482 P 2d 147.

Injury to Real Property

Where defendant's geophysical exploration injured plaintiff's real property, statute of limitations under subdivision 2 of this section was not tolled by plaintiff's decision to permit defendant to repair the damage with approximately one year remaining under the statute. *Carlson v. Ray Geophysical Division*, 156 M 450, 481 P 2d 327.

"Liability Created by Statute"

Action against county by motorist who alleged he suffered personal injuries in a single vehicle accident due to negligent failure of county to properly maintain and

mark a "T" intersection of county roads was subject to three-year statute of limitations under section 93-2605, rather than two-year statute of limitations under subdivision (1) of this section as an action "upon a liability created by statute," since section 40-4402 waiving sovereign immunity to extent of county's liability insurance simply removes a defense previously existing rather than creating a new cause of action. *State ex rel. Fallon County v. District Court, Sixteenth Judicial Dist., Fallon County*, 161 M 79, 505 P 2d 120.

Negligent Misrepresentation

Action for negligent misrepresentation is action for fraud within meaning of statute and is subject to two-year statute of limitations which begins to run when plaintiff acquires knowledge of facts constituting negligent misrepresentation. *Falls Sand & Gravel Co. v. Western Concrete, Inc.*, 270 F Supp 495.

Nuisance

In action for alleged well pollution, trial court erred in not limiting recovery to two years before filing date of complaint since, under circumstances, pollution of ground water by dumping of glue waste was continuing temporary nuisance and this section applied. *Nelson v. C & C Plywood Corp.*, 154 M 414, 465 P 2d 314, 39 ALR 3d 893.

Two year statute of limitation was applicable to continuous and unremitting nuisance; recovery for damage occurring as a result of continuous and unremitting nuisance more than two years prior to the commencement of an action was barred by this section. *Lahman v. Rocky Mountain Phosphate Co.*, 161 M 28, 504 P 2d 271.

Statutory Liability

The cause of action based on a railroad's statutory duty to maintain a cement drop, siphon and wooden flume on its right of way did not accrue on the taking of the right of way nor on the abandonment of the right of way and notice to water rights owners that it would no longer maintain the works, but rather would accrue only after injury occurred from the railroad's failure to maintain the works. *Harrer v. Northern Pacific Ry. Co.*, 147 M 130, 410 P 2d 713.

Cause of action under federal civil rights statute for improper search accrued at the time of the search, not at the time the search was adjudicated invalid or when criminal prosecution was terminated, so that action brought more than two years after the search was barred by this section. *Strung v. Anderson*, 452 F 2d 632.

Waiver

Although plaintiff filed complaint alleging injury to real property more than two years after injury occurred, defendants waived defense of statute of limitations when they failed to plead it affirmatively. *Butte Country Club v. Metropolitan Sanitary & Storm Sewer Dist. No. 1*, — M —, 519 P 2d 408.

Wrongful Death

Section 93-2605, rather than subdivision 2 of this section, applies to an action for wrongful death. *Bryant v. Hall*, 157 M 28, 482 P 2d 147, overruling *Smith v. Wiprud*, 154 M 325, 463 P 2d 317.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588; *Hager v. Tandy*, 146 M 531, 410 P 2d 447.

93-2612. (9040) Actions relating to bond issues, time for bringing. No action can be brought for the purpose of restraining the issuance and sale of bonds or other obligations by the state of Montana or any school district, county, city, town, or political subdivision of the state, or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations, after the expiration of sixty (60) days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of sixty (60) days from the date of the order, resolution or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or not holding the election; nor shall any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period. This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R. C. M. 1921; amd. Sec. 15, Ch. 158, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

93-2613. (9041) Actions for relief not hereinbefore provided for.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

93-2619. Action for damages arising out of or resulting from construction of improvements to real property—ten years. Except as provided in sections 2 and 3 [93-2620 and 93-2621] of this act, no action to recover damages (other than an action upon any contract, obligation, or liability, founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of, or land surveying done in connection with, any improvement to real property shall be commenced more than ten (10) years after completion of such improvement.

History: En. Sec. 1, Ch. 60, L. 1971.

commenced; and providing an effective date.

Title of Act

An act to provide a period of ten years within which an action for damages arising out of certain services or work on improvements to real property must be

Injuries from Unsafe Structure

A contractor following plans and specifications given to him, although not ordinarily liable for injuries resulting from

a fault in the design of the structure, may be liable if a contractor of average skill and ordinary prudence would not have

followed those specifications. *Bush v. Albert D. Wardell Contractor, Inc.*, — M —, 528 P 2d 215.

93-2620. Exception—injury occurring during tenth year. Notwithstanding the provisions of section 1 [93-2619] of this act, an action for such damages for an injury which occurred during the tenth year after such completion may be commenced within one (1) year after the occurrence of such injury.

History: En. Sec. 2, Ch. 60, L. 1971.

93-2621. Responsibility of person in control not affected. The limitation prescribed by this act shall not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement at the time a right of action arises.

History: En. Sec. 3, Ch. 60, L. 1971.

93-2622. Time of completion of improvements to real property. As used in this act, the term "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier.

History: En. Sec. 4, Ch. 60, L. 1971.

93-2623. Other limitation periods not extended. Nothing in this act shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

History: En. Sec. 5, Ch. 60, L. 1971.

Effective Date

Section 6 of Ch. 60, Laws 1971 read "In order to provide a reasonable period for

commencement of any action for which a right of action has heretofore accrued, this act shall be effective January 1, 1972."

93-2624. Actions for medical malpractice. Action for injury or death against a physician or surgeon, dentist, registered nurse, nursing home administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be commenced within three (3) years after the date of injury or three (3) years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury whichever occurs last, but in no case may such action be commenced after five (5) years from the date of injury. However, this time limitation shall be tolled for any period during which such person has failed to disclose any act, error, or omission upon which such action is based and which is known to him, or through the use of reasonable diligence subsequent to said act, error or omission would have been known to him.

History: En. Sec. 1, Ch. 328, L. 1971; amd. Sec. 1, Ch. 191, L. 1973.

Title of Act

An act to prescribe the period of limitations in which actions for professional negligence can be commenced.

Amendments

The 1973 amendment inserted "nursing home administrator" and "long-term care facility" in the first sentence.

Fraudulent Concealment

Doctrine of fraudulent concealment

was not applicable to medical malpractice case in which plaintiff alleged that doctor had failed to make a full disclosure of the experimental nature of the operation to be performed but admitted that he was informed in detail of the type of operation to be performed and that he consented to the operation and where, although doctor assured plaintiff that he would be able to return to work within six months of the operation, plaintiff admitted to being totally disabled for six years after the operation and partially disabled thereafter. *Monroe v. Harper*, — M —, 518 P 2d 788.

CHAPTER 27—TIME OF COMMENCEMENT OF ACTIONS— GENERAL PROVISIONS CONCERNING

93-2702. (9048) Exception, where defendant is out of the state.

Service Possible

Absence of alleged tort-feasor from statute did not toll statute of limitations where it was possible to obtain service during the entire three-year period, under

Rule 4D(2)(a) initially and under Rule 4D(3) after he left the state. *State ex rel. McGhee v. District Court, Sixteenth Judicial Dist., Fallon County*, — M —, 508 P 2d 130.

93-2703. (9049) Exception as to persons under disabilities.

Insanity Tolling Statute

Where plaintiff was insane for approximately five months following personal injuries, statute did not begin to run until he recovered his sanity and action was

timely filed when commenced within statutory period after that date. *State ex rel. Hi-Ball Contractors, Inc. v. District Court*, 154 M 99, 460 P 2d 751.

93-2708. (9054) Provision where judgment has been reversed.

Dismissal of Counterclaim

Quiet title action based on husband's fraud of wife's community property instituted as counterclaim and timely brought under statute of limitations but dismissed on husband's motion may be properly instituted as principal action within one year after involuntary dismissal. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

either a voluntary dismissal or a dismissal for failure to prosecute. *Lehtonen v. E. I. DuPont DeNemours & Co.*, 389 F Supp 633.

Neglect to Prosecute

Dismissal under M. R. Civ. P., Rule 41 (e), for failure to have summons issued within one year after commencement of the action is a dismissal for neglect to prosecute within the meaning of this section, and this section does not operate to permit the commencement of a new action after expiration of the statute of limitations. *State ex rel. Equity Supply Co. v. District Court*, 159 M 34, 494 P 2d 911.

Failure to Amend Complaint

Filing of new action was barred, where plaintiff had brought diversity action in New York within the proper time limit, but the cause had been dismissed for failure to amend complaint, which under Montana law, would have constituted

CHAPTER 28—PARTIES TO CIVIL ACTIONS

Section 93-2803. When a married person is a party—actions by and against.

93-2804. Spouse may defend, when.

93-2807. Unmarried person may sue for seduction.

93-2808. Parent or guardian may sue for seduction of child or ward.

93-2809. Parent or guardian may sue for injury or death of child or ward.

93-2803. (9069) When a married person is a party—actions by and against. A married person may sue and be sued in the same manner as if such person were sole.

History: En. Sec. 7, 1st Div. Comp. Stat. 1887; re-en. Sec. 572, C. Civ. Proc. 1895; re-en. Sec. 6479, Rev. C. 1907; re-en. Sec. 9069, R. C. M. 1921; amd. Sec. 48, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "married person" for "married woman" and made a minor change in phraseology.

93-2804. (9070) Spouse may defend, when. If a husband and wife be sued together, each spouse may defend for his or her own right, and if the other spouse neglect to defend, the spouse who does choose to defend may defend for the other spouse's right also.

History: En. Sec. 8, p. 44, Bannack Stat.; re-en. Sec. 8, p. 136, L. 1867; re-en. Sec. 8, p. 28, Cod. Stat. 1871; amd. Sec. 8, p. 41, L. 1877; re-en. Sec. 8, 1st Div. Rev. Stat. 1879; re-en. Sec. 8, 1st Div. Comp. Stat. 1887; re-en. Sec. 573, C. Civ. Proc. 1895; re-en. Sec. 6480, Rev. C. 1907; re-en. Sec. 9070, R. C. M. 1921; amd.

Sec. 49, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 371.

Amendments

The 1975 amendment substituted "spouse" for references to the husband or the wife; and made minor changes in phraseology.

93-2807. (9073) Unmarried person may sue for seduction. An unmarried person may prosecute, as plaintiff, an action for his or her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in such person's favor.

History: En. Sec. 11, p. 41, L. 1877; re-en. Sec. 11, 1st Div. Rev. Stat. 1879; re-en. Sec. 11, 1st Div. Comp. Stat. 1887; re-en. Sec. 576, C. Civ. Proc. 1895; re-en. Sec. 6483, Rev. C. 1907; re-en. Sec. 9073, R. C. M. 1921; amd. Sec. 50, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 374.

Amendments

The 1975 amendment substituted "unmarried person" for "unmarried female"; and made minor changes in phraseology.

93-2808. (9074) Parent or guardian may sue for seduction of child or ward. Either parent may prosecute as plaintiff for the seduction of the child, and the guardian for the seduction of the ward, though the child or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

History: En. Sec. 12, p. 41, L. 1877; re-en. Sec. 12, 1st Div. Rev. Stat. 1879; re-en. Sec. 12, 1st Div. Comp. Stat. 1887; re-en. Sec. 577, C. Civ. Proc. 1895; re-en. Sec. 6484, Rev. C. 1907; re-en. Sec. 9074, R. C. M. 1921; amd. Sec. 51, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 375.

Amendments

The 1975 amendment substituted "Either parent" for "A father, or in case of his death or desertion of his family, the mother"; and substituted "child" for "daughter" in two places.

93-2809. (9075) Parent or guardian may sue for injury or death of child or ward. Either parent may maintain an action for the injury or death of a minor child, and a guardian for injury or death of a ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person who is responsible for his conduct, also against such other person.

History: En. Sec. 11, p. 44, Bannack Stat.; amd. Sec. 11, p. 136, L. 1867; re-en. Sec. 11, p. 29, Cod. Stat. 1871; re-en. Sec. 13, p. 42, L. 1877; re-en. Sec. 13, 1st Div. Rev. Stat. 1879; re-en. Sec. 13, 1st Div.

Comp. Stat. 1887; amd. Sec. 578, C. Civ. Proc. 1895; re-en. Sec. 6485, Rev. C. 1907; re-en. Sec. 9075, R. C. M. 1921; amd. Sec. 52, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 376.

Amendments

The 1975 amendment substituted "Either parent" for "A father, or in case of his death or desertion of his family, the mother"; and made a minor change in phraseology.

Jurisdiction—Indian plaintiff

Montana has jurisdiction to hear action for wrongful death brought by Indian plaintiff against non-Indian as a result of automobile accident within the boundaries of the reservation, since all persons have free access to Montana courts and equal protection of its laws. *McCrea v. Busch*, — M —, 524 P 2d 781.

Limitation of Actions

An action by an adoptive father and

natural grandfather under this section is an action for an injury to a pecuniary interest of the parent, therefore one for an injury to a property right which must be commenced within two years from the date the claim arose under section 93-2607(2). *LaTray v. Mannix Electric Co.*, 148 M 303, 419 P 2d 744, 745, but see *Bryant v. Hall*, 157 M 28, 482 P 2d 147.

Mother Bringing Action

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. *Cowan v. Pacific Gamble Robinson Co.*, 232 F Supp 403, 405.

93-2810. (9067) When representative may sue for death, etc.

Limitation of Actions

An action under this section for wrongful death is governed by the three-year limitation in section 93-2605 rather than by the two-year limitation in section 93-2607. *Bryant v. Hall*, 157 M 28, 482 P 2d

147, overruling *Smith v. Wiprud*, 154 M 325, 463 P 2d 317.

References

Stiles v. Gove, 345 F 2d 991, 992.

93-2823. (9085) Tenants in common, etc., may sever in bringing, etc.

Assignor Bringing Action

Assignee of one-half interest of an overriding royalty agreement with plaintiff-assignor and defendant could not be joined as a party plaintiff in a suit to

compel defendant to pay the other half interest to plaintiff whether assignor was a trustee for the assignee or they were tenants in common. *Lowe & Lynn v. Flank Oil Co.*, 144 M 499, 398 P 2d 608.

93-2824. (9086) Action—when not to abate by death, marriage, etc.

Loss of Earnings

Where, in survivorship action under this section, jury returned verdict based only upon personal property belonging to decedent destroyed in accident, and awarded no damages for loss of earning capacity, district court did not abuse its discretion in granting new trial on damages only, since jury could not "disregard uncontradicted, credible nonopinion evidence" establishing decedent's earning capacity. *Putman v. Pollei*, 153 M 406, 457 P 2d 776.

Order for New Trial Reversed

Where a case has been fully and ably submitted, and the verdict is supported by the evidence, and there is nothing incredible in the verdict, a new trial should not be granted and the original jury verdict should be allowed to stand. *Beebe v. Johnson*, — M —, 526 P 2d 128.

Personal Injuries Action

Suit for personal injuries filed by decedent prior to his death survived in favor of administratrix of his estate. *Pickett v. Kyger*, 151 M 87, 439 P 2d 57.

Wrongful Death Action

Where defendant's negligence caused a boat collision, injured decedent but not seriously enough to cause death, and knocked him into the water where he drowned, there must have been an appreciable time between the collision and death, so that decedent had a cause of action for his injuries which survived. *Stephens v. Brown*, 160 M 453, 503 P 2d 667.

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. *Cowan v. Pacific Gamble Robinson Co.*, 232 F Supp 403, 405.

CHAPTER 29—PLACE OF TRIAL OF CIVIL ACTIONS

Section 93-2906. Place of trial may be changed in certain cases.

93-2908. Papers to be transmitted—costs and fees—jurisdiction.

93-2901. (9093) Certain actions to be tried where the subject, etc.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640; Tassie v. Continental Oil Co.,

228 F Supp 807, 808; Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

93-2902. (9094) Other actions—where the cause, etc.

Governor

Complaint that governor's executive order establishing multi-county planning districts was inconsistent with legislative resolution stated a cause of action arising in the county of the governor's official residence, and venue should have been

changed to Lewis and Clark county. Guildroy v. Anderson, 159 M 325, 497 P 2d 688.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

93-2903. (9595) Place of trial of actions against counties.

Action by County against Nonresident

This section does not require a change of venue where a county brings action against a nonresident in the district court of that county. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

Judicial Review

Appeal for judicial review of an administrative decision of the county welfare

board does not constitute an action against the county, and such appeal is properly brought in the county where the plaintiff resides. State ex rel. Hendrickson v. Gallatin County, — M —, 526 P 2d 354.

References

Tassie v. Continental Oil Co., 228 F Supp 807, 808.

93-2904. (9096) Other actions, according to the residence, etc.

Action on Contract and in Tort

In action in which complaint stated a claim for breach of contract and an inter-related and dependent claim in tort, the county of performance of the contract was the county in which any tort was committed for purpose of determining venue. Slovak v. Kentucky Fried Chicken, — M —, 518 P 2d 791.

Burden of Proof

In contract action, once defendant showed that his place of residence was other than where suit was brought, the burden of proof was on the plaintiff to meet the motion for change of venue. Rapp v. Graham, 145 M 371, 401 P 2d 579.

Change of Venue

Although express terms of construction loan agreement between borrowers residing in Lewis and Clark County and lender in Cascade County did not designate place of performance of the contract, district court of Lewis and Clark County properly denied motion of lender for change of venue of action for breach of the contract, where borrowers' affidavit in opposition to the motion showed that the contract was to be performed in Lewis and Clark County, the loan agree-

ment, note and mortgage being executed in Lewis and Clark County for home to be built in that county and inspection, supervision and completion of the home were to take place in Lewis and Clark County where all bills were to be paid. Brown v. First Federal Savings & Loan Assn. of Great Falls, 144 M 149, 394 P 2d 1017, 1019.

Denial of defendant's motion for change of venue to place where he resided was improper, since, where plaintiff-relator did not plead the commission agreement itself, nor include it as an exhibit, there was no way of considering the venue matter except on the residence of the defendant. Rapp v. Graham, 145 M 371, 401 P 2d 579, distinguished in 160 M 482, 503 P 2d 659.

The provisions of this section are permissive only and where five separate actions were brought in four widely separated counties against the same defendant involving the same accident, court did not abuse its discretion in granting change of venue under section 93-2906, subdivision 3, to the place where the tort occurred, for the convenience of the witnesses. Putro v. Mannix Electric, Inc., 147 M 314, 412 P 2d 410.

Under statute providing that on proper

motion court must change place of trial when convenience of witnesses and ends of justice would be promoted and under further statute requiring action to be tried in county in which defendants reside at commencement of action, defendants were entitled to have action moved to county upon which all agreed, which was residence of one defendant, which was place insurance contract was entered into, which was where tort occurred and which was most convenient for defendants and their witnesses. *Truck Ins. Exchange v. National Farmers Union Property & Cas. Co.*, 149 M 387, 427 P 2d 50.

Construction

Statutory provisions creating exceptions to the general rule recognizing a defendant's privilege to be sued in his own county will not be given a strained or doubtful construction. *Rapp v. Graham*, 145 M 371, 401 P 2d 579.

Foreign Corporate Surety

Action brought against foreign corporate surety without joinder of principal was properly venued in county where plaintiff resided, even though the bond assured a subcontract which was to be performed in another county and the residence of the subcontractor was in another county. *Morgen & Oswood Constr. v. United States Fidelity & Guaranty Co.*, — M —, 535 P 2d 170.

Foreign Corporations

A foreign corporation does not acquire residence for venue purposes in a particular county by appointing a resident of that county as its agent for service of process, and it may be sued in any county. *Foley v. General Motors Corp.*, 159 M 469, 499 P 2d 774.

Performance of Contract

In an action for breach of an oral agreement to lease farm land, venue was in the county where the estate of one of the defendants was being probated, in which the other defendants resided, in which the land was located, and in which service was made and the creditor's claim filed. *Erickson v. Toy*, 142 M 121, 385 P 2d 268.

If contract is to be performed in a county other than the county of defendant's residence, then the plaintiff has his choice of the two counties in which to sue. He may sue in the county where defendant resides or in the county where the contract is to be performed. The provisions of this section are permissive. *Brown v. First Federal Savings & Loan Assn. of Great Falls*, 144 M 149, 394 P 2d 1017, 1019.

In order for plaintiff to maintain action on contract in a county where defendant

does not reside, the place of performance must be evident either by express terms of contract, or by necessary implication that a county other than that of defendant's residence is intended to be the county of performance. *Brown v. First Federal Savings & Loan Assn. of Great Falls*, 144 M 149, 394 P 2d 1017, 1019.

To maintain suit in county other than that of defendant's residence, plaintiff must show clearly the facts relied on to bring the case within one of the exceptions to the rule. The contract must state clearly that it is to be performed in county other than that of defendant's residence so that no other fair construction can be placed upon it. *Rapp v. Graham*, 145 M 371, 401 P 2d 579.

In bringing suit where contract is to be performed, rather than place of defendant's residence, a mere direction by the seller as to the place of payment is not sufficient to maintain venue within exception to this section, nor can a promise to remit to cover the purchase price be sued upon by the seller in the county of the point to which the remittance is to be made. *Rapp v. Graham*, 145 M 371, 401 P 2d 579.

In suit against seller for breach of express warranty against diseased cattle, buyer properly exercised option in initiating suit in county where cattle were delivered as county where contract was to be performed. *Neely v. Steinbach*, 149 M 119, 423 P 2d 584.

Contract clause expressly requiring defendant to perform by making payments in county other than defendant's county of residence came within performance exception in statute thereby entitling plaintiff to institute action on contract in county in which payments were to be made. *McGregor v. Svare*, 151 M 520, 445 P 2d 571.

In action on account for grazing rentals on lands owned or controlled by plaintiff, trial court erred in granting motion for change of venue where action was predicated upon contract to be performed in county where action was brought. *Cormier Bros., Inc. v. Willcutt*, 154 M 297, 462 P 2d 889.

"Place of performance" rule regarding venue in contract actions was inapplicable in action based on implied contract that did not specify place of payment; change of venue to county where defendants resided was proper. *Bick v. Haidle*, 156 M 350, 480 P 2d 818.

Where intent of parties was that contract would be performed in either Cascade or Chouteau County and contract was performed in Cascade County until breach, venue of action on contract was in Cascade County rather than county of defendant's residence. *Armon v. Stewart*, — M —, 511 P 2d 8.

Tort Actions

Attorney's advice to a client that a personal injury action had to be filed in the county where the cause arose was not improper or unethical. *Petition of Wasson*, 143 M 323, 389 P 2d 406.

Where the driver of one vehicle and the estate of the driver of the other vehicle had been joined as defendants in tort action, the one driver had no right to change of venue after the dismissal of the estate, since the plaintiff, in joining the resident estate as a defendant had reasonable grounds to believe that he had a cause of action against the resident estate. *Boucher v. Steffes*, 160 M 482, 503 P 2d 659.

Although either the county of residence of defendant or county where tort was committed was proper county in which to bring action for personal injury arising from accident, where none of the defendants were residents of Montana, the action was triable in any county designated by plaintiff in his complaint. *Tassie*

v. Continental Oil Co., 228 F Supp 807, 809.

Defendant is not entitled to a change of venue in personal injury action where plaintiff filed the action in the proper county. *Tassie v. Continental Oil Co.*, 228 F Supp 807, 809.

Where personal injury action arising from accident occurring in Fallon County, Montana, was commenced in Silver Bow County, Montana, by nonresident plaintiff, and nonresident defendants in removing action to federal district court designated Billings Division, but stated no statutory grounds for change of venue and did not show good cause for assignment to Billings Division, plaintiff was entitled to change of venue to Butte Division in which Silver Bow County was located. *Tassie v. Continental Oil Co.*, 228 F Supp 807, 810.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365; *Yeager v. Foster*, 146 M 330, 406 P 2d 370.

93-2906. (9098) Place of trial may be changed in certain cases. The court or judge must, on motion, change the place of trial in the following cases:

1. to 3. *** [Same as parent volume.]

4. When the judge is disqualified from acting for any cause; but no change of the place of trial shall be made if:

(a) the parties agree in writing upon another district judge, or member of the bar as judge pro tempore, or

(b) any qualified district judge is called in, and within thirty (30) days after the motion is made, appears and assumes jurisdiction of the cause and of all matters and proceedings therein.

If the judge so appears he shall be vested with, and shall exercise, all the authority of the judge of the district in which the action or proceeding may be pending.

History: Ap. p. Sec. 21, p. 46, Bannack Stat.; amd. Ch. 8, L. 3d Session 1866, which was set aside by Act of Congress of March 2, 1867; amd. Sec. 1, p. 68, L. 1867; amd. Sec. 27, p. 31, Cod. Stat. 1871; re-en. Sec. 62, p. 53, L. 1877; re-en. Sec. 62, 1st Div. Rev. Stat. 1879; re-en. Sec. 62, 1st Div. Comp. Stat. 1887; amd. Sec. 615, C. Civ. Proc. 1895; en. Ch. 2, Ex. L. 1903; re-en. Sec. 6506, Rev. C. 1907; re-en. Sec. 9098, R. C. M. 1921; amd. Sec. 1, Ch. 6, L. 1973. Cal. C. Civ. Proc. Sec. 397.

Amendments

The 1973 amendment rewrote and rearranged the language of subdivision (4) for clarity, but without change in substance.

Change of Venue

Under statute providing that on proper motion the court must change place of trial when convenience of witnesses and ends of justice would be promoted and under further statute requiring action to be tried in county in which defendants reside at commencement of action, defendants were entitled to have action moved to county upon which all agreed, which was residence of one defendant, which was place insurance contract was entered into, which was where tort occurred and which was most convenient for defendants and their witnesses. *Truck Ins. Exchange v. National Farmers Union Property & Cas. Co.*, 149 M 387, 427 P 2d 50.

Convenience of Witnesses

Where affidavit showed that five separate actions had been brought against defendant in four widely separated counties involving the same occurrence, trial court properly granted change of venue for the convenience of the witnesses to the county where accident occurred although affidavit omitted names of witnesses and nature of their testimony. *Putro v. Mannix Electric, Inc.*, 147 M 314, 412 P 2d 410.

County Taxpayers as Jurors

Where county brought an action for damages done to bridge struck by defendant's truck, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though the jury was made up, necessarily, of taxpayers of that county, each of whom had a pecuniary interest of \$31. *Carter County v. Cambrian Corp.*, 143 M 193, 387 P 2d 904.

Multiple Causes of Action

Where the defendant is entitled to a change of venue on one cause of action in a complaint containing more than one cause of action, the motion for change must be granted even though the other cause or causes would be triable where the plaintiff commenced the action. *Beavers v. Rankin*, 142 M 570, 385 P 2d 640.

Multiple Defendants

Even after dismissal from an action on tort arising outside the state of the only defendants residing in the county where the action was brought, the remaining defendants were not entitled to have the venue changed to the county of their residence so long as the plaintiff reasonably believed in good faith, when he brought the action, that he had a cause of action against the defendants resident in the county where brought. *Boucher v. Steffes*, 160 M 482, 503 P 2d 659.

Time for Motion

Court's discretion in granting change of venue under subdivision 3 of this section cannot be exercised until after a defendant has answered, so that where action was brought under section 93-2904 in county where co-defendant lived, denial of first motion before defendant had answered applied only to the residency requirement of the co-defendant and did not bar determination of second motion made under this section after defendant had answered. *Putro v. Mannix Electric, Inc.*, 147 M 314, 412 P 2d 410.

References

Tassie v. Continental Oil Co., 228 F Supp 807, 810; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648; *Yeager v. Foster*, 146 M 330, 406 P 2d 370.

93-2908. (9100) Papers to be transmitted—costs and fees—jurisdiction. When an order is made transferring an action or proceeding for trial, the clerk of the court, or justice of the peace, must transmit the pleading and papers therein to the clerk or justice of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made, except that: (1) when the action is an action upon a contract, express or implied, for the direct payment of money, and no claim contained in the complaint exceeds one thousand dollars (\$1,000); (2) the county designated in the complaint is not the proper county; and (3) if the plaintiff will not within ten (10) days after request stipulate for change of venue and defendant files a motion for such change and such motion is thereafter granted; then the party filing the complaint must pay all costs and fees of filing the papers anew and all costs and fees, including reasonable attorney's fees to be fixed by the court incurred by the defendant by reason of the change of venue motion and hearing. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100,

R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1971. Cal. C. Civ. Proc. Sec. 399.

Amendments

The 1971 amendment added to the sec-

ond sentence the language requiring payment of costs and fees by the party filing

the complaint in the instances described in the numbered clauses.

CHAPTER 30—MANNER OF COMMENCING CIVIL ACTIONS— SERVICE OF SUMMONS

93-3002. (9106) Superseded—Supreme Court Order 10750.

Supersession

This section (Sec. 23, p. 47, Bannack Stat.; Sec. 23, p. 139, L. 1867; Sec. 67, p. 54, L. 1877), relating to endorsement

of the complaint and issue of summons, is superseded by M. R. Civ. P., Rule 41(e) as amended by Sup. Ct. Ord. 10750.

93-3008. (9112) Superseded—Supreme Court Order 10750.

Supersession

This section (Sec. 1, Ch. 37, L. 1917; Sec. 1, Ch. 135, L. 1949; Sec. 1, Ch. 122, L. 1951), relating to service of process

on corporations through the secretary of state, is superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

93-3011, 93-3012. (9115, 9116) Superseded—Supreme Court Order 10750.

Supersession

These sections (Secs. 4, 5, Ch. 37, L. 1917), relating to service of process on corporations through the secretary of

state, are superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

93-3020. (9124) Return of summons.

References

Sewell v. Beatrice Foods Co., 145 M 337, 400 P 2d 892.

CHAPTER 37—VERIFICATION OF PLEADINGS

93-3702. (9163) Verification of pleadings.

References

Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 747.

CHAPTER 41—CLAIM AND DELIVERY OF PERSONAL PROPERTY

Section 93-4102. Affidavit and its requisites.

93-4102. (9221) Affidavit and its requisites. (1) When a delivery is claimed, an affidavit must be made by the person claiming the property, or someone in his behalf, stating:

(a) Facts which establish reasonable belief that the person claiming the property is the owner, or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the property;

(b) That the property is wrongfully detained by the defendant;

(c) That the same has not been taken for a tax, assessment, or fine, pursuant to statute; or seized, under an execution or an attachment against the property of the person claiming the property; or, if so seized, that it is by statute exempt from seizure; and,

(d) Particularly describing the property and the actual value of the property.

(2) The sheriff shall make no seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign such an order if he is satisfied:

(a) That the party seeking possession of the property has made a prima facie showing of his right to possession and the necessity for seizure at a show cause hearing before him with at least three days' notice to the person in possession of the property, if such person cannot be found for personal service, notice posted on the property and in three (3) public places in the county where the property is located is sufficient service for this purpose; or

(b) That the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking possession.

History: En. Sec. 72, p. 56, Bannack Stat.; amd. Sec. 100, p. 151, L. 1867; re-en. Sec. 117, p. 49, Cod. Stat. 1871; re-en. Sec. 155, p. 75, L. 1877; re-en. Sec. 155, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 103, L. 1885; re-en. Sec. 6623, Rev. C. 1907; re-en. Sec. 9221, R. C. M. 1921; amd. Sec. 1, Ch. 362, L. 1975. Cal. C. Civ. Proc. Sec. 510.

Amendments

The 1975 amendment inserted the subsection (1) designation; redesignated former subdivisions 1 to 4 as subdivisions (1)(a) to (1)(d); substituted "person claiming the property" for "plaintiff" throughout the section; substituted subdivision (1)(a) for former subdivision 1; inserted "Particularly describing the property and" at the beginning of subdivision (1)(d); and added subsection (2). For prior version, see parent volume.

93-4104. (9223) Undertaking and duty of sheriff.

Constitutionality

Replevin provisions which authorized state agents to seize property in possession of another person upon application of claimant and subsequent posting of bond prior to a hearing to determine parties' rights to possession are invalid as they

work a deprivation of property without due process of law by denying an opportunity to be heard before chattels are taken from the possessor. *Fuentes v. Shevin*, 407 US 67, 32 L Ed 2d 556, 92 S Ct 1983.

CHAPTER 42—INJUNCTION

Section 93-4207. Security upon injunction.

93-4215. Injunction against price fixing or consumer abuses.

93-4216. Injunction may issue without bond.

93-4203. (9242) Injunction—when not allowed.

Discretionary Appointment

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board of railway commissioners in the proper exercise of their discretion. *Steel v. Board of Railroad Commrs.*, 144 M 432, 397 P 2d 101.

Enforcement of Public Statute

County commissioners and assessor cannot be enjoined from relying on re-

classification officer's real property evaluations to determine tax assessment rolls. *State ex rel. Keast v. Krieg*, 145 M 521, 402 P 2d 405, 19 ALR 3d 396.

District court acted beyond its jurisdiction by issuing injunction to prevent board of equalization from revising grading and valuation of nonirrigated farm land pursuant to section 84-429.7 et seq. *State ex rel. Lord v. District Court*, 154 M 269, 463 P 2d 323.

93-4204. (9343) Injunction order—when granted.**Real Estate Cases**

An order enjoining landowner from proceeding with mobile home subdivision on his land until zoning regulations were adopted was improper because it was

impossible to predict whether landowner's plans would conflict with zoning regulations finally adopted. *State ex rel. Corning v. District Court of 18th Judicial District*, 156 M 81, 474 P 2d 701.

93-4205. (9244) Injunction order, etc.**Injunction Granted after Hearing**

Portion of statute pertaining to affidavits does not apply to injunction issued on basis of hearing on order to show cause.

State ex rel. Martin v. District Court, Twelfth Judicial Dist., 151 M 41, 438 P 2d 563.

93-4206. (9245) When notice required.**Injunction Without Notice**

Petition by female minor for injunction prohibiting rodeo from refusing to allow her to participate as a bare-back bronc rider was not such an emergency as to invoke the extraordinary remedies of the court without notice, bond, or plenary

hearing. *State ex rel. Reno v. District Court*, — M —, 529 P 2d 1407.

References

State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405.

93-4207. (9246) Security upon injunction. On granting an injunction or restraining order, the court or judge may require, except when the state, a county, or any subdivision thereof, or municipal corporation, or a married person in a suit for divorce against his or her spouse, is a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If the plaintiff fails to do so, such plaintiff is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

History: Ap. p. Sec. 86, p. 59, Bannack Stat.; re-en. Sec. 115, p. 154, L. 1867; re-en. Sec. 132, p. 52, Cod. Stat. 1871; re-en. Sec. 174, p. 79, L. 1877; re-en. Sec. 174, 1st Div. Rev. Stat. 1879; re-en. Sec. 176, 1st Div. Comp. Stat. 1887; en. Sec. 874, C. Civ. Proc. 1895; re-en. Sec. 6646, Rev. C. 1907; re-en. Sec. 9246, R. C. M. 1921; amd. Sec. 53, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 529.

Amendments

The 1975 amendment substituted "married person" for "married woman" in the first sentence; substituted "his or her spouse" for "her husband" in the first sentence; substituted "plaintiff" for "he" in the third sentence, and made minor changes in phraseology.

93-4213. (9252) Costs may be waived.**Injunction Dissolved**

Defendants requested, and were entitled to, costs and attorney fees in action where plaintiffs received an injunction pendente lite ordering defendants to re-

move a fence from the road and to allow plaintiffs to use the road, but the evidence later showed that plaintiffs had no easement rights in the defendant's land. *Godfrey v. Pilon*, — M —, 529 P 2d 1372.

93-4215. (9254) Injunction against price fixing or consumer abuses.

(1) Whenever any action, either civil or criminal, shall have been instituted in court in this state against any person for price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people, the court in which such action is pending is authorized to issue an injunction to restrain any such person from doing business in this state pending the final determination of said action so instituted.

(2) When the public service commission is conducting an adjudicatory proceeding or formal investigation relating to continuation or interruption of service upon the motion of the consumer counsel, or the interested person or his legal representative, a district court may, upon the application of the consumer counsel, or the interested person or his legal representative, enter a restraining order against any person respondent in the adjudicatory proceeding or investigation. Such a restraining order may prohibit the respondent, his agents, employees, licensees, and assignees, from acting in the manner complained of in the proceeding before the commission until the commission has rendered its decision in the matter. The restraining order may include an order to show cause why the order should not become an injunction for the duration of the proceeding before the commission.

History: En. Sec. 1, Ch. 93, L. 1905; re-en. Sec. 6654, Rev. C. 1907; re-en. Sec. 9254, R. C. M. 1921; amd. Sec. 56, Ch. 100, L. 1973; amd. Sec. 3, Ch. 138, L. 1975.

Amendments

The 1973 amendment substituted "for price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people" for "for the purpose of enforcing the provisions of section 20 of article XV of the constitution of the state of Montana, or any law or laws enacted pursuant to or for carrying out the same"; and deleted "in violation of said section of the constitution, or in violation of any law or laws enacted pursuant to or for the purpose of enforcing said section of

the constitution" after "doing business in this state" near the end of the section.

The 1975 amendment inserted the subsection (1) designation; substituted "any person for price fixing or regulating the production of any article of commerce or of the product of the soil" near the beginning of subsection (1) for "any person or persons, corporation or corporations, foreign or domestic"; deleted "if it be a court of record, or if not, then any court of record in this state, shall be" after "action is pending", in the middle of the section; deleted "or persons, corporation or corporations, foreign or domestic" after "restrain any such person" near the end of the section; added subsection (2); and made minor changes in phraseology.

93-4216. (9255) Injunction may issue without bond. Said injunction shall issue as in cases of equity, without bond, upon the application of the county attorney of the county in which such action is pending, or upon the application of the attorney general, in the name of the state of Montana, upon a prima facie showing that an action, civil or criminal, has been so instituted and is so pending, charging such person or persons, corporation or corporations, foreign or domestic, with such violation.

History: En. Sec. 2, Ch. 93, L. 1905; re-en. Sec. 6655, Rev. C. 1907; re-en. Sec. 9255, R. C. M. 1921; amd. Sec. 57, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "such violation" at the end of the section for "a violation of said section of the consti-

tution, or of any law or laws enacted thereunder."

Repealing Clause

Section 58 of Ch. 100, Laws 1973 read "Sections 3-101.1, 4-348, 16-405, 16-2407, 23-2701.1, 41-1609, 75-6410.1, 84-211 and 84-707, R. C. M. 1947, are repealed."

CHAPTER 43—ATTACHMENT

Section 93-4304. Undertaking.

93-4331.1. Release of attachment by clerk where no proceedings taken in main action.

93-4304. (9259) Undertaking. Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, with two (2) or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars (\$1,000) or under, or, in case the amount so claimed by plaintiff shall exceed one thousand dollars (\$1,000), then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of twenty thousand dollars (\$20,000). The condition of such undertaking shall be to the effect that if the defendant recovered judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. At any time within thirty (30) days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) days nor more than ten (10) days, must justify before a judge of the district court, or before the clerk thereof, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment.

History: Ap. p. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C.

1907; re-en. Sec. 9259, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967. Cal. C. Civ. Proc. Sec. 539.

Amendments

The 1967 amendment increased the maximum amount of an undertaking from \$10,000 to \$20,000.

93-4314. (9267) Garnishment—when garnishee liable to plaintiff.**References**

Great Falls Transfer & Storage Co. v.

Pan American Petroleum Corp., 353 F 2d 348.

93-4331.1. Release of attachment by clerk where no proceedings taken in main action. If a writ of attachment has been levied on real property as provided in section 93-4307, R. C. M. 1947, and no proceedings have been taken in the action in which the attachment was issued for a period of five years, the clerk of court shall upon application of the defendant or the record owner of such real property issue a release of the attachment and a copy of such release shall be filed with the county clerk where the writ of attachment and notice thereof is filed and the county clerk shall file and index such release as any other releases of attachment.

History: En. Sec. 1, Ch. 97, L. 1965.

Title of Act

An act providing that a lien of attach-

ment on real property may be released by the clerk of court where no action has been taken to foreclose such lien for a period of five years.

93-4335. (9288) Different attachments—when liens accrue.

Conflicting Attachments

Since, for purposes of garnishment, a debt has no fixed situs but may be reached in any jurisdiction where the person found owing it can be located, Wyoming court was bound to give full faith and credit to Montana court in de-

termining which garnishor had prior claim where writs of attachment had been issued by different parties on the same garnishee in both states. *Great Falls Transfer & Storage Co. v. Pan American Petroleum Corp.*, 353 F 2d 348.

93-4342. (9295) Repealed.

Repeal

This section (Sec. 9295, R. C. M. 1921), relating to attachment of stocks of foreign

corporations, was repealed by Sec. 143, Ch. 300, Laws 1967.

CHAPTER 44—RECEIVERS

Section 93-4401. Appointment of receiver.

93-4401. (9301) Appointment of receiver. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. to 4. * * * [Same as parent volume.]

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

History: Ap. p. Sec. 116, p. 67, *Bannack Stat.*; re-en. Sec. 143, p. 160, L. 1867; re-en. Sec. 179, p. 62, *Cod. Stat.* 1871; en. Sec. 221, p. 93, L. 1877; re-en. Sec. 221, 1st Div. Rev. Stat. 1879; re-en. Sec. 229, 1st Div. Comp. Stat. 1887; re-en. Sec. 950, C. Civ. Proc. 1895; re-en. Sec. 6698, Rev. C. 1907; re-en. Sec. 9301, R. C. M. 1921; amd. Sec. 142, Ch. 300, L. 1967. Cal. C. Civ. Proc. Sec. 564.

Amendments

The 1967 amendment deleted subdivision 5 and redesignated former subdivision 6 as subdivision 5.

Debt as Basis for Appointment

Where bank held stock as security on loans made by farming corporation, but it appeared that stockholders were, in good faith, planning to meet their obligation and the corporation was solvent,

appointment of receiver at instance of bank merely to protect the price of the stock was erroneous. *State ex rel. Larry C. Iverson, Inc. v. District Court*, 146 M 362, 406 P 2d 828.

Extraordinary Remedy

Appointment of a receiver being a "drastic" remedy, which deprives the lawful owner of property the right to manage and control his own interests, the power to appoint a receiver should be exercised sparingly only upon a strong showing, and not as of course. If the desired outcome may be achieved in any other way, then this course should be followed. *State ex rel. Larry C. Iverson, Inc. v. District Court*, 146 M 362, 406 P 2d 828.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

93-4406. (9306) Powers of receivers.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

CHAPTER 47—JUDGMENTS IN GENERAL

Section 93-4707. Judgment for or against married person.

93-4707. (9319) Judgment for or against married person. Judgment for or against a married person may be rendered and enforced as if such person were single.

History: En. Sec. 1006, C. Civ. Proc. 1895; re-en. Sec. 6716, Rev. C. 1907; re-en. Sec. 9319, R. C. M. 1921; amd. Sec. 54, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "married person" for "married woman"; and made a minor change in phraseology.

CHAPTER 49—ISSUES—MODE OF TRIAL AND POSTPONEMENT—
PROCEDURE TO PROCURE JURY TRIAL

93-4910. (9332) Motion to postpone a trial, etc.

Continuance

Since this is a discretionary statute, denial of state's motion for continuance in condemnation action was not an abuse of discretion where landowner had made a full and complete admission as to testimony state's value witness would have given. *State Highway Commission v. Cooper*, — M —, 521 P 2d 190.

Criminal Cases

Court did not commit prejudicial error when it overruled criminal defendant's objection to county attorney's motion for continuance even though motion was not supported by required affidavit where motion was made just prior to end of trial court's day and trial resumed promptly on next morning. *State v. Crockett*, 148 M 402, 421 P 2d 722.

CHAPTER 50—TRIAL BY JURY—FORMATION OF JURY—CHALLENGES

Section 93-5010. Challenge.

93-5008. (9341) Ballots—when drawn from box No. 3.

Compiler's Notes

Section 93-1506 referred to in the first

sentence, was repealed by Sec. 4, Ch. 110, Laws of 1969.

93-5010. (9343) Challenge. Each party may challenge the jury or jurors as follows:

1. to 3. * * * [Same as parent volume.]

There can be only one challenge on a side to the array or panel, which may be made by one or more of the parties. A challenge to the array or panel may be made and the whole array or panel set aside by the court, when the jury was not selected, drawn, summoned or notified as prescribed by law. Challenges to individual jurors are for cause or peremptory. Each party is entitled to four peremptory challenges, except as provided for under section 93-1205. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff.

History: Ap. p. Sec. 133, p. 69, Ban-nack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R. C. M.

1921; amd. Sec. 1, Ch. 300, L. 1971. Cal. C. Civ. Proc. Sec. 301.

Amendments

The 1971 amendment added the exception to the fourth sentence of the second paragraph; and made a minor change in punctuation.

93-5011. (9344) Challenges for cause.**Taxpayers of Plaintiff County**

Where county brought an action for damages to bridge, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though

the jury was necessarily made up of taxpayers of that county each of whom had a pecuniary interest averaging \$31. *Carter County v. Cambrian Corp.*, 143 M 193, 387 P 2d 904.

CHAPTER 51—TRIAL—CONDUCT OF THE TRIAL**93-5101. (9349) Order of trial.****Instructions to Jury**

Plaintiff gave implied consent and waived objection by actively participating without objection in proceedings wherein trial court gave oral answer to question asked by the jury and orally confirmed the correctness of other instructions orally

stated by counsel. *Seder v. Peter Kiewit Sons' Co.*, 156 M 322, 479 P 2d 448.

References

Boehler v. Sanders, 146 M 158, 404 P 2d 885.

93-5102. (9350) View by jury of the premises.**Discretion of Trial Court**

A viewing is within the discretion of the trial court, even where there has been a change in the condition of the scene of the accident or the thing which contributed to the accident. *Clark v. Worrall*, 146 M 374, 406 P 2d 822.

cause of the accident, it was not an abuse of discretion to allow the jury to view the premises on which the accident occurred after the alterations had been made. *Clark v. Worrall*, 146 M 374, 406 P 2d 822.

References

Wolfe v. Northern Pacific R. Co., 147 M 29, 409 P 2d 528.

Time of Viewing

Where alterations to defendant's bowling alley had little relationship to the

93-5104. (9352) Jury may take with them certain papers.**Subsequent Request by Jury**

Trial court did not err in permitting state's exhibits, consisting of photographs of scene of accident, to be taken to jury

room when asked for by jury about one hour after it began deliberation. *State v. Medicine Bull*, 152 M 34, 445 P 2d 916.

93-5105. (9353) Deliberation of jury—how conducted.**Communication with Alternate Juror**

It was reversible error for alternate juror to be in the jury room for about fifteen minutes during deliberations and to have lunch with the jury; court is not at liberty to make exceptions based on length of time, actual harm, or fact that person involved was a sworn alternate juror. *State Highway Commission v. Dunks*, — M —, 531 P 2d 1316.

by all the jurors. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

Misconduct of Jury

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus, is a result of a fair expression of opinion

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

93-5106. (9354) May come into court for further instructions.**Brought into Court**

Although this section provides that the jury may request that they be brought into court, this is not mandatory and the

jury may send an inquiry out to the court. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 498.

Oral Instructions

Plaintiff gave implied consent and waived objection by failure to object and by active participation in proceedings wherein trial court, without the presence of a stenographer, gave oral answer to

question asked by the jury and orally confirmed the correctness of other instructions orally requested by counsel. *Seder v. Peter Kiewit Sons' Co.*, 156 M 322, 479 P 2d 448.

93-5110. (9358) Verdict—how declared—form of—polling the jury.**Poll of Jury**

Court abused discretion in granting new trial based solely on ground that it had erred in refusing to grant request for poll of jury; error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that, in response

to question by judge, foreman of jury advised him they had agreed upon verdict and that, following reading of verdict, judge inquired if it was true verdict of at least eight of them and jury answered in affirmative. *Martello v. Darlow*, 151 M 232, 441 P 2d 175.

CHAPTER 52—THE VERDICT—GENERAL AND SPECIAL—DIRECTED WHEN**93-5205. (9364) Directed verdict—when.****Evidence Supporting Directed Verdict**

Denial of motion for directed verdict by lessor of destroyed building being sued by lessee claiming that premises were repairable was cause for reversal where, viewing evidence most favorable to plaintiff lessee and considering as proven everything which evidence tended to prove, reasonable man could come to no other conclusion but that building was destroyed. *Solich v. Hale*, 150 M 358, 435 P 2d 883.

In negligence suit, defendant was entitled to directed verdict where only evidence attempting to establish proximate causal connection between breach of duty and plaintiff's injuries and damages were reports of persons not present at trial, which were private documents and not part of a case file of attending physicians. *Pickett v. Kyger*, 151 M 87, 439 P 2d 57, distinguished in 157 M 277, 285, 485 P 2d 54.

Inferences from Evidence

In passing on a motion for a directed verdict the court will consider the evidence in the light most favorable to the party against whom the motion is directed and will draw every reasonable inference from such evidence. *Parini v. Lanch*, 148 M 188, 418 P 2d 861, 863.

Insufficient Evidence

A directed verdict may be granted when the evidence is so insufficient in fact as to be insufficient in law. *Parini v. Lanch*, 148 M 188, 418 P 2d 861, 863.

Motion by Both Parties

Owner of building destroyed by gas explosion was entitled to directed verdict

against general contractor who was clearly liable on evidence, but not against gas company who should have been granted its motion for directed verdict on record unequivocally demonstrating that gas company took every reasonable precaution to protect customers as required by law. *Bridges v. Moritz*, 149 M 273, 425 P 2d 721.

Negligence

Directed verdict on liability of defendant for injuries sustained by plaintiff, when defendant's car struck mare which was being led by rope attached to saddle on gelding upon which plaintiff was riding, was proper where negligence of defendant was shown by evidence that defendant had been drinking; that he was driving the car at 30-35 mph while passengers were hunting gophers beside the road; that defendant was not aware of the mare which he struck until the collision was inevitable; and that he failed to stop after realizing that he had struck horse in violation of section 32-1202. *Parini v. Lanch*, 148 M 188, 418 P 2d 861, 864.

Questions of Fact

A jury question is presented only when reasonable men might differ as to the conclusions of fact to be drawn from the evidence, viewed in the light most favorable to the party against whom the motion is made. *Parini v. Lanch*, 148 M 188, 418 P 2d 861, 863.

Directed verdict upholding contested will was improper where, under the evidence, reasonable and fair-minded men might have reached the conclusion that the will was invalid due to fraud, undue influence or lack of testamentary capacity.

Estate of Hall v. Milkovich, 158 M 438, 492 P 2d 1388.

Review of Order Directing Verdict

In reviewing an order directing a verdict for the defendant, the supreme court would consider only the evidence of the plaintiff, excluding a bare scintilla but including every fair inference which might be drawn from the facts proved, as well as any evidence introduced by defendant which tended to support the plaintiff's

case, and if the evidence viewed in the most favorable light tended to establish the case made by plaintiff's pleadings, the order would be reversed. McIntosh v. Linder-Kind Lumber Co., 144 M 1, 393 P 2d 782.

References

Holland v. Konda, 142 M 536, 385 P 2d 272; Tolson v. Tolson, 145 M 87, 399 P 2d 754.

CHAPTER 53—TRIAL BY THE COURT

93-5302. (9366) Superseded—Supreme Court Order 10750-9.

Supersession

Section 93-5302 (Sec. 1111, C. Civ. Proc. 1895), requiring decision on findings upon question of fact to be in writing and filed

within twenty days after submission, was superseded by M. R. Civ. P., Rule 52(a), as amended by Sup. Ct. Ord. 10750-9.

93-5305 to 93-5307. (9369 to 9371) 10750-9.

Supersession

Sections 93-5305 to 93-5307 (Secs. 1114 to 1116, C. Civ. Proc. 1895), relating to exceptions for defective findings and to

Superseded—Supreme Court Order

effect of want of findings, were superseded by M. R. Civ. P., Rule 52(b), as amended by Sup. Ct. Ord. 10750-9.

CHAPTER 55—EXCEPTIONS—SETTLEMENT AND ALLOWANCE OF BILL

93-5501. (9386) Superseded—M. R. App. Civ. P.

Supersession

This section (Ap. p. Sec. 164, p. 75, Bannack Stat.), defining an exception and providing the time when the exception

must be taken, is listed as superseded in Table A of M. R. App. Civ. P. See M. R. Civ. P., Rule 46.

93-5503. (9388) Superseded—M. R. App. Civ. P.

Supersession

This section (Ap. p. Sec. 166, p. 76, Bannack Stat.; Sec. 1, Ch. 92, L. 1905; Sec. 2, Ch. 225, L. 1921), relating to ex-

ceptions and objections, is listed as superseded in Table A of M. R. App. Civ. P. See M. R. Civ. P., Rule 46.

93-5504 to 93-5509. (9389 to 9394) Superseded—M. R. App. Civ. P., Rules 9, 10 and 25.

Supersession

These sections (Secs. 1154 to 1158, C. Civ. Proc. 1895; Sec. 1, Ch. 35, L. 1907; Secs. 3, 4, Ch. 225, L. 1921; Sec. 1, Ch.

19, L. 1941; Sec. 1, Ch. 85, L. 1955), relating to the settlement and allowance of bill of exceptions, are superseded by M. R. App. Civ. P., Rules 9, 10 and 25.

CHAPTER 56—NEW TRIALS—GROUNDS AND MOTIONS FOR—RECORD ON APPEAL FROM FINAL JUDGMENT

93-5601. (9395) New trial defined.

Parties Restored to Original Position

The granting of a motion for a new trial restores the parties to the positions they occupied before the trial and the action is commenced anew with the par-

ties limited to their original pleadings but unbound by previous evidence and testimony except as held by existing rules of evidence. Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5602. (9396) New trial in equity cases.**Irregularity in Proceedings**

In an action for specific performance where plaintiff who had no knowledge of law or procedure acted as his own counsel and, though he received some assistance from the trial judge, many errors in

the proceedings were shown in the record, it was within the discretion of the judge to grant defendant's motion for a new trial. *Waite v. Waite*, 143 M 248, 389 P 2d 181.

93-5603. (9397) When a new trial may be granted.**Abuse of Discretion**

Aggrieved party has burden of proving that district court manifestly abused its discretion by granting new trial; prima facie case of manifest abuse of discretion may be made by discrediting grounds specified for granting new trial or showing that existing error did not materially affect substantial rights of moving party. *Tigh v. College Park Realty Co.*, 149 M 358, 427 P 2d 57.

Where jury's verdict was based on conflicting and probably false testimony, refusal of new trial by trial court was sufficient abuse of discretion to require supreme court to reverse lower court and order new trial. *Morris v. Corcoran Pulpwood Co.*, 154 M 468, 465 P 2d 827.

Accident or Surprise.

Introduction in midtrial in negligence action against county for death of exhibitor's horses in barn fire of evidence tending to show that care, custody and control of horses was in county was not surprise creating ground for new trial because of county's representation by insurers' counsel where county had been warned by insurer almost two and a half years before trial that policy might not cover loss because of policy exclusion of property in care, custody and control of the insured; refusal to admit into evidence county's premium book containing rules and regulations applicable to exhibitors as well as exculpatory disclaimers of liability for loss of exhibitor's livestock did not create surprise. *Haynes v. County of Missoula*, — M —, 517 P 2d 370.

Appellate Review

In condemnation proceeding, where state appraised land at \$18,000, condemnee appraised it at \$95,000 and jury awarded condemnee \$21,000, granting of new trial because award was inadequate was not such an abuse of trial judge's discretion as to warrant reversal in spite of fact that there was no rebuttal of state's only expert witness. *State Highway Commission v. Greenfield*, 145 M 164, 399 P 2d 989.

Inadequate Damages

The trial court had no power in a condemnation case to condition its denial of

a new trial on acceptance by the highway commission of a higher award. *State Highway Commission v. Schmidt*, 143 M 505, 391 P 2d 692.

Court abused its discretion in granting new trial upon grounds of insufficiency of evidence to justify verdict in that "verdict awarded by the jury to the plaintiff is wholly inadequate" where there was conflict in evidence and where it was question for jury whether injuries suffered by passenger were caused by grossly negligent operation of car or whether passenger assumed risk of going into car driven by man who had several drinks. *Heen v. Tiddy*, 151 M 265, 442 P 2d 434.

Granting of new trial on ground that award of \$4,000 was inadequate damages for death of high school sophomore whose funeral expenses were \$1,605 was an abuse of discretion under the circumstances, including fact that plaintiff father received no earnings from son and gave no indication of need. *Davis v. Smith*, 152 M 170, 448 P 2d 133.

Inadmissibility of Evidence

Although the plaintiff presented other evidence of negligence, the introduction of hearsay report showing slight malfunctioning of a ski lift was reversible error. *Pessl v. Bridger Bowl*, — M —, 524 P 2d 1101.

Instructions to Jury

Long form quotient verdict instruction from Jury Instruction Guide is not "a resort to the determination of chance" within meaning of statute in absence of showing that jurors agreed in advance that quotient thus obtained should constitute amount of verdict and adhered to that agreement. *Thomas v. Whiteside*, 148 M 394, 421 P 2d 449.

Where trial court erred in its instruction on assumption of risk in pedestrian injury case, trial court did not abuse its discretion by granting new trial pursuant to this section. *Jankovich v. Neill*, 153 M 337, 457 P 2d 475.

Insufficient Evidence

Plaintiff was not entitled to an easement by necessity where there was evidence of other possible routes and no evidence of necessity. *Wilson v. Chestnut*, — M —, 525 P 2d 24.

Jury Misconduct

In a condemnation proceeding, affidavits from jurors showing that a newspaper cartoon having to do with condemnation cases in general had been viewed by some members of the jury during the trial could not be used to support the motion for a new trial in the absence of a showing that the verdict was reached in a manner other than by a fair expression of opinion by the jurors. *State Highway Commission v. Manry*, 143 M 382, 390 P 2d 97, distinguished in *Goff v. Kinzie*, 148 M 61, 417 P 2d 105, and in *Rasmussen v. Sibert*, 153 M 286, 456 P 2d 835.

New trial was properly granted where foreman of jury made his own investigation at the scene of the accident after hearing testimony and informed the other members of jury, during their deliberation, of the results of his investigation. The foreman was guilty of misconduct upon which verdict could be impeached by affidavits of jurors. *Goff v. Kinzie*, 148 M 61, 417 P 2d 105, distinguished in *Rasmussen v. Sibert*, 153 M 286, 456 P 2d 835.

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

Trial court's granting of new trial on grounds of jury misconduct was reversible error where such motion was made under subd. 1 of this section and supported by jury affidavits, since use of jury affidavits under this section is confined to motions made under subd. 2. *Rasmussen v. Sibert*, 153 M 286, 456 P 2d 835.

Negligence Verdict

The power company has no duty to supply an explanation for every fire that occurs on private property to which it supplies electricity, and where the company presented evidence from which reasonable men could conclude that it was free from negligence, this was sufficient to support jury verdict in favor of the

power company. *Hash v. Montana Power Co.*, — M —, 524 P 2d 1092.

Polling Jury

Court abused discretion in granting new trial based solely on ground that it had erred in refusing request for poll of jury; error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that in response to question by judge, foreman of jury advised him they had agreed upon verdict and that following reading of verdict, signed by foreman, judge inquired of jury if it was true verdict of at least eight of them and jury answered in affirmative. *Martello v. Darlow*, 151 M 232, 441 P 2d 175.

Statement of Grounds

Rule 7(b)(1) of the Rules of Civil Procedure requires that a motion state the grounds with particularity, and it was error to grant a new trial based on a motion that merely recited the grounds in the words of subdivisions 1, 6 and 7 of this section without more particularity. *Halsey v. Uithof*, — M —, 532 P 2d 686.

Substantial Evidence

Although new trial for insufficiency of evidence is discretionary with trial court and will not be disturbed except for abuse, the discretion is exhausted when court finds substantial evidence to support verdict; evidence from which it could be found that drive-in restaurant owner had no reasonable cause to anticipate "spur of the moment" unprovoked assault upon patron supported verdict for owner in action for injuries, so that granting of new trial was abuse of discretion. *Kincheloe v. Rygg*, 152 M 187, 448 P 2d 140.

Verdict of \$30,000 for compensation for land taken in condemnation action was supported by substantial evidence where two appraisers had valued the land at \$19,650 and \$22,873 respectively, plaintiff's expert valued the land at \$64,000 and plaintiff testified that his compensation should be \$78,000; trial court erred in granting new trial on ground that evidence was insufficient to justify the verdict. *State Highway Comm. v. Arms*, — M —, 518 P 2d 35.

References

Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5606. (9400) Superseded—Supreme Court Order 10750-9.

Supersession

Section 93-5606 (Sec. 172, p. 77, Bannack Stat.; Sec. 3, Ch. 41, L. 1907; Sec. 8, Ch. 225, L. 1921), relating to hearing on new

trial motion, was superseded by M. R. Civ. P., Rule 59(d), as amended by Sup. Ct. Ord. 10750-9.

93-5607, 93-5608. (9401, 9402) Superseded—M. R. App. Civ. P., Rules 7, 9, 10 and 25.

Supersession

These sections (Ap. p. Sec. 289, p. 115, L. 1877; Ap. p. Secs. 1175, 1176, C. Civ. Proc. 1895; Sec. 4, Ch. 41, L. 1907; Sec. 9, Ch. 225, L. 1921), relating to a stay

of proceedings on notice of motion for a new trial and contents of record on appeal, are superseded by M. R. App. Civ. P., Rules 7, 9, 10 and 25.

**CHAPTER 57—JUDGMENT—MANNER OF GIVING AND ENTRY—
JUDGMENT ROLL AND DOCKET—LIEN OF**

- Section 93-5708. Judgment lien—when it begins and when it expires.**
93-5710.1. Judgment or decree recorded before 1965 as notice of contents—
 certified copies as evidence.
93-5710.2. Judgment or decree recorded before 1967 as notice of contents—
 certified copies as evidence.
93-5710.3. Validation of defective judgments or decrees affecting realty—1969
 act.
93-5710.4. Validation of defective judgments or decrees affecting realty—1971
 act.
93-5710.5. Validation of defective judgments or decrees affecting realty—1973
 act.

93-5702. (9404) Superseded—M. R. App. Civ. P., Rule 29.

Supersession

This section (Sec. 174, p. 77, Bannack Stat.), providing for bringing of a case before the court for argument where the

case has been reserved for argument, is superseded by M. R. App. Civ. P., Rule 29.

93-5707. (9409) Superseded—M. R. App. Civ. P., Rules 9, 10 and 25.

Supersession

This section (Ap. p. Sec. 203, p. 174, L. 1867; Sec. 1, Ch. 36, L. 1921; Sec. 1, Ch. 146, L. 1925), relating to the contents

and filing of judgment roll, is superseded by M. R. App. Civ. P., Rules 9, 10 and 25.

93-5708. (9410) Judgment lien—when it begins and when it expires. Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he may afterward acquire, until the lien ceases. The lien continues for six years, unless the judgment be previously satisfied.

History: Ap. p. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307, 1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 671.

Advisory Committee's Note

Subdivision (b) of Rule 41, M. R. App. Civ. P., eliminates the reference in section 93-5708 to judgment rolls, which are nowhere provided for in Montana Rules of Appellate Civil Procedure.

Amendments

The 1965 amendment substituted "the entry of the judgment in the judgment book" for "after filing the judgment roll" near the beginning of the section.

93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence. Any judgment or decree of any court

of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 124, L. 1965.

Title of Act

An act to validate records of court proceedings containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may

be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered; and providing for a repealing clause.

Repealing Clause

Section 2 of Ch. 124, Laws 1965 repealed all acts and parts of acts in conflict therewith.

93-5710.2. Judgment or decree recorded before 1967 as notice of contents—certified copies as evidence. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1967, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 184, L. 1967.

Title of Act

An act to validate records of court proceedings prior to January 1, 1967, containing defects, omissions, informalities or irregularities in obtaining a judgment

or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

93-5710.3. Validation of defective judgments or decrees affecting realty—1969 act. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1969, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 73, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

Title of Act

An act to validate records of court proceedings prior to January 1, 1969, containing defects, omissions, informalities or ir-

regularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

93-5710.4. Validation of defective judgments or decrees affecting realty—1971 act. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1971, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 94, L. 1971.

Title of Act.

An act to validate records of court pro-

ceedings prior to January 1, 1971, containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which

time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with

the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

93-5710.5. Validation of defective judgments or decrees affecting realty—1973 act. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1973, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 146, L. 1973.

Title of Act

An act to validate records of court proceedings prior to January 1, 1973, containing defects, omissions, informalities or irregularities in obtaining a judgment or

decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

CHAPTER 58—THE EXECUTION

Section 93-5813.1. Waiver of exemptions prohibited in unsecured note.

93-5834. Real property sold—how redeemed—who are redemptioners.

93-5836. Redemptioners' rights—manner of redeeming—when purchaser entitled to deed—certificate of redemption—redemption by stockholders—redeeming from spouse.

93-5846. Validation of judicial sales before 1973.

93-5813.1. Waiver of exemptions prohibited in unsecured note. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

History: En. Sec. 1, Ch. 172, L. 1965.

Title of Act

An act to prohibit waiver of statutory exemptions.

93-5816. (9429) Exemption of earnings—debts incurred for necessities.

Waiver of Exemption

General waiver of statutory exemption in secured promissory note was not enforceable as against divorcee working to provide the necessities for herself and her

children; a levy of execution could not be had on her wages. *Anaconda Federal Credit Union, #4401 v. West*, 157 M 175, 483 P 2d 909.

93-5824. (9432) Notice of sale—how given—copy of notice.

Sale of Real Property

District court ordering the restraining

of a sale of real property on execution can determine if additional notice is re-

quired after the injunction is lifted if the initial notice requirements of this section have been met. Williams v. Superior Homes, Inc., 148 M 38, 417 P 2d 92, 95.

93-5834. (9442) Real property sold—how redeemed—who are redemptioners. Property sold subject to redemption, as provided by the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, the judgment debtor's spouse, or his successor in interest, in the whole or any part of the property, and if the judgment debtor or successor be a corporation, then by a stockholder thereof;

2. * * * [Same as parent volume.]

History: En. Sec. 230, p. 181, L. 1867; re-en. Sec. 280, p. 87, Cod. Stat. 1871; re-en. Sec. 330, p. 129, L. 1877; re-en. Sec. 330, p. 129, 1st Div. Rev. Stat. 1879; re-en. Sec. 341, 1st Div. Comp. Stat. 1887; amd. Sec. 1234, C. Civ. Proc. 1895; re-en. Sec. 6837, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1913; re-en. Sec. 9442, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1927; amd. Sec. 55, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 701.

Amendments

The 1975 amendment substituted "the judgment debtor's spouse" for "his wife" in subdivision 1.

93-5836. (9444) Redemptioners' rights—manner of redeeming—when purchaser entitled to deed—certificate of redemption—redemption by stockholders—redeeming from spouse. (1) * * * [Same as parent volume.]

(2) Written notice of redemption must be given to the sheriff, and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner, or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk; and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien. If no redemption be made within one year after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and the debtor is restored to his own estate. If the spouse redeem, such spouse shall become the owner of the debtor spouse's interest, subject to any liens thereon at the time of the execution sale. Upon a redemption by a debtor, or the debtor's spouse, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county

clerk must note the record thereof in the margin of the record of the certificate of sale.

(3) * * * [Same as parent volume.]

(4) If the spouse of a judgment debtor redeem, the judgment debtor, within one year after the date of sale, may redeem by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse, the amount paid to effect the redemption, with interest thereon at the rate of one-half of one per cent ($\frac{1}{2}\%$) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon.

History: Ap. p. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en Sec. 9444, R. C. M. 1921; amd. Sec. 2, Ch. 16, L. 1927; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 703.

Amendments

The 1975 amendment substituted "the judgment debtor's spouse" or "the spouse" for references to the wife throughout the section; substituted "the debtor spouse's interest" for "her husband's interest" throughout the section; substituted "judgment debtor" or "debtor" for "the husband" or "he" throughout the section; and made minor changes in phraseology.

93-5841. (9449) Possession of lands prior to foreclosure, etc.

Vendee of Mortgagee

Purchasers who took premises subject to pre-existing mortgage, and who had not assumed payment of mortgage, even though occupying premises as their home at time of foreclosure, were not "execu-

tion debtors" within meaning of statute and were not entitled to possession of premises during one-year period of redemption. First Nat. Bank of Circle v. Hastetter, 149 M 142, 423 P 2d 306.

93-5843. (9451) Party who pays more than his share, etc.

Indemnity Denied

Jury verdict, finding that driver was grossly negligent, precluded insurer of driver from receiving indemnity from auto manufacturer, even though jury had

also made a determination that the auto manufacturer was liable for negligent manufacture and design of auto. Automobile Club Ins. Co. v. Toyota Motor Sales, Inc., — M —, 531 P 2d 1337.

93-5846. Validation of judicial sales before 1973. All judicial sales of real property prior to January 1, 1973, provided no action is now pending to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale, and when no such deed has been executed, shall entitle such purchaser to such deed; and such deed, if now or when executed, shall be sufficient to convey all the title of judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, or the manner of making or conducting the sale, or in the recitals or references in such deed, shall be disregarded and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 80, L. 1973.

Title of Act

Compiler's Notes

Except for the date in the second line of text, the above section is identical with Sec. 1, Ch. 57, Laws of 1965, Sec. 1, Ch. 180, Laws of 1967, Sec. 1, Ch. 76, Laws of 1969 and Sec. 1, Ch. 97, Laws of 1971, previously compiled at this section. The compiler has therefore substituted the above section for the 1971 section.

An act relating to validation of judicial sales prior to January 1, 1973, of real property and curing defects or irregularities in the issuance of execution, manner of making or conducting the sale, or in the recitals or references in sheriffs' deeds.

CHAPTER 60—FORECLOSURE OF MORTGAGES—ACTIONS FOR—
SALES UNDER POWERS

93-6001. (9467) Proceedings in foreclosure suits.

Deficiency Judgment

The purpose of this section is to require the mortgagee to bring one foreclosure action to enforce "any right" protected by the mortgage. If the price bid in at foreclosure is insufficient to reimburse the mortgagee, a deficiency judgment may be entered against the mortgagor for the balance due and may be enforced by a lien upon the real property of the mortgagor only. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 482.

certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted mortgagee to pay taxes and collect the same upon foreclosure. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 483.

A mortgagee who pays taxes on the mortgaged property prior to foreclosure does not acquire a distinct and separate lien on the property which survives the foreclosure sale. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 483.

Tax Lien

Where, subsequent to purchase of tax

CHAPTER 61—NUISANCE, WASTE AND TRESPASS ON REAL
PROPERTY—ACTIONS FOR

93-6101. (9474) Nuisance defined and actions for.

Baseball Park

"Pee wee" baseball league conducted on empty lot in residential district was not nuisance under statute, notwithstanding evidence that: field was brightly illuminated, crowds were noisy, traffic was heavy, field was dusty, some children used foul language, balls were hit into neighboring yards damaging lawns and flowers

and games were played after 10 p.m.; nuisance, if any, was private and arose out of particular manner of operation of legitimate enterprise lower court should merely have entered decree calculated to eliminate injurious features. Kasala v. Kalispell Pee Wee Baseball League, 151 M 109, 439 P 2d 65, 32 ALR 3d 1120.

CHAPTER 62—QUIETING TITLE TO PROPERTY, REAL AND PERSONAL
AND OTHER ACTIONS CONCERNING REAL ESTATE

93-6203. (9479) Actions to quiet title to real property—parties—venue.

After-acquired Interest

Since the filing of a quiet title action freezes the respective rights of the parties, summary judgment was proper against plaintiff whose claim to title consisted

of tax certificates which had been assigned to him two weeks after commencement of the action. Alden v. Johnson, — M —, 535 P 2d 168.

93-6216. (9492) An order may be made to allow a party to survey, etc.

References

State ex rel. State Highway Commis-

sion v. District Court, 147 M 348, 412 P 2d 832.

93-6218. (9494) Petition for order—procedure.**References**

State ex rel. State Highway Commis-

sion v. District Court, 147 M 348, 412 P 2d 832.

CHAPTER 63—PARTITION OF REAL ESTATE—ACTIONS FOR**93-6301. (9516) Who may bring actions for partition.****Separate Owners of Land and Building**

Where land and building on land had separate owners, owner of building had no right to an order that the land and building be sold together and the proceeds

apportioned between the owners, because the owners were not cotenants of the whole property but sole owners of parts of the property. Allman v. Stuart, 158 M 402, 492 P 2d 909.

93-6311. (9526) Title of parties may be tried.**Compiler's Notes**

Sections 93-3101 to 93-3103, 93-3201 to 93-3203, 93-3301 to 93-3306, 93-3401, 93-3402, 93-3404, 93-3405, 93-3408, 93-3410 to 93-3412, 93-3415, 93-3501 to 93-3506, 93-3601 to 93-3604, 93-3701, 93-3801 to 93-3803, 93-

3806 to 93-3808, 93-3811 to 93-3813, 93-3815 to 93-3820, 93-3901 to 93-3905, 93-3907, and 93-3909, contained in the reference to sections 93-3101 to 93-3910 in this section in the parent volume, were repealed by Sec. 84, Ch. 13, Laws 1961.

93-6352 to 93-6354. (9567 to 9569) Repealed.**Repeal**

Sections 93-6352 to 93-6354 (Secs. 1391 to 1393, C. Civ. Proc. 1895), relating to

the sale or release of dower interests, were repealed by Sec. 15, Ch. 263, Laws 1975.

CHAPTER 64—QUO WARRANTO**93-6405. (9580) When private person may commence action.****Unqualified Appointee**

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board

of railway commissioners in proper exercise of their discretion. Steel v. Board of Railroad Commrs., 144 M 432, 397 P 2d 101.

CHAPTER 66—JUSTICES' COURTS—PLACE OF TRIAL OF ACTIONS

Section 93-6601. Where actions must be commenced.

93-6602. Place of trial may be changed in certain cases.

93-6601. (9619) Where actions must be commenced. Actions in justices' courts may be commenced, and, subject to the right to change the place of trial, as in this chapter provided, may be tried:

1. When the defendant, or all the defendants, if there be more than one, reside in another county than that in which the right of action accrues, and the action be for the recovery of personal property, or the value thereof, or damages for taking or detaining the same; in the county in which the property, or any part thereof, may be found, or in which the property, or any part thereof, was taken, or in which the defendant or either of the defendants reside;

2. When the defendant, or all of the defendants, if there be more than one, reside in another county than that in which the right of action accrues, and the action be for damages for violation of an express or implied contract, or for money due on an express or implied contract, debt,

note, or account; in the county in which such contract or obligation is to be or was to have been performed, or such money is to be or was to have been paid, or in which the defendant or either of the defendants resides; and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed or paid, unless there is a special contract to the contrary;

3. When the defendant, or all of the defendants, if there be more than one, reside in another county than that in which the right of action accrues, and the action be for damages for injury to person, property, or reputation; in the county where the injury was committed, or in which the defendant or either of the defendants reside;

4. When the defendant is a nonresident of the county; in any county where he may be found and served with summons personally;

5. When the defendant is a nonresident of the state; in any county of the state;

6. When the parties voluntarily appear and plead, without summons; in any county of the state;

7. In all other cases; in any county in which the defendant, or any one of the defendants, if there be more than one, reside, or may be found and served with summons personally.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R. C. M. 1921; amd. Sec. 15, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 832.

Amendments

The 1973 amendment deleted "any township of" before references to the county in paragraphs 1 to 4 and 7; substituted "county" for "township" in paragraphs 5 and 6; and made minor changes in phraseology.

93-6602. (9620) **Place of trial may be changed in certain cases.** The court may, at any time before trial, on motion, change the place of trial in the following cases:

1. and 2. *** [Same as parent volume.]

3. When a jury has been demanded, and either party makes and files an affidavit that he cannot have a fair and impartial trial, on account of the bias or prejudice of the citizens of the county, town, or city against him.

4. and 5. *** [Same as parent volume.]

History: Ap. p. Sec. 594, p. 160, Bannack Stat.; re-en. Sec. 700, p. 176, Cod. Stat. 1871; re-en. Sec. 760, 1st Div. Rev. Stat. 1879; re-en. Sec. 780, 1st Div. Comp. Stat. 1887; en. Sec. 1481, C. Civ. Proc. 1895; re-en. Sec. 6987, Rev. C. 1907; re-en.

Sec. 9620, R. C. M. 1921; amd. Sec. 16, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 833.

Amendments

The 1973 amendment substituted "county" for "township" near the end of paragraph 3.

CHAPTER 67—JUSTICES' COURTS—MANNER OF COMMENCING ACTIONS IN

Section 93-6706. Summons—how issued, directed and what to contain.
93-6711. Service of summons.

93-6706. (9631) **Summons—how issued, directed and what to contain.** The summons must be directed to the defendant and signed by the justice, and must contain:

1. The title of the court, the name of the county and city in which the action is commenced, and the names of the parties thereto;

2. and 3. * * * [Same as parent volume.]

History: Ap. p. Sec. 556, p. 152, Bannack Stat.; re-en. Sec. 662, p. 169, Cod. Stat. 1871; re-en. Sec. 722, 1st Div. Rev. Stat. 1879; re-en. Sec. 742, 1st Div. Comp. Stat. 1887; en. Sec. 1505, C. Civ. Proc. 1895; re-en. Sec. 6998, Rev. C. 1907; re-en. Sec. 9631, R. C. M. 1921; amd. Sec. 1,

Ch. 91, L. 1939; amd. Sec. 17, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 884.

Amendments

The 1973 amendment deleted "or township" following "name of the county and city" in paragraph 1.

93-6711. (9636) Service of summons. The summons may be served by a sheriff or constable of any of the counties of this state; provided, that when a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons; or the summons may be served by any person resident in the state, eighteen (18) years of age or older, not a party to the suit, and must be served and returned as provided in Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (8), and (9); or it may be served by publication, provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8), so far as they relate to publication of summons, are made applicable to justices' courts; the word "justice" being substituted for the word "clerk" whenever the latter word occurs.

History: En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1967; amd. Sec. 57, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 849.

Amendments

The 1967 amendment substituted "Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (8), and (9)" for "sections

93-3006 and 93-3007" after "as provided in"; and substituted "provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8)" for "and sections 93-3013, 93-3014 and 93-3015" after "by publication."

The 1975 amendment deleted "male" before "person resident in the state"; and substituted "eighteen (18) years of age or older" for "over the age of eighteen (18) years."

CHAPTER 68—JUSTICES' COURTS—PLEADINGS IN

Section 93-6802.1. Permissible pleadings enumerated.

93-6802.2. Demurrers abolished.

93-6811. Answer to amended pleadings.

93-6802. (9639) Repealed.

Repeal

Section 93-6802 (Sec. 1521, C. Civ. Proc. 1895), relating to the pleadings in justices'

courts, was repealed by Sec. 21, Ch. 420, Laws 1975.

93-6802.1. Permissible pleadings enumerated. In justice court there shall be a complaint and answer; and there shall be a reply to a counterclaim denominated as such; and an answer to a cross-claim; a third-party complaint, if a person who is not an original party is brought into the action; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

History: En. Sec. 1, Ch. 168, L. 1967. allowed in justice court and designating the form thereof.

Title of Act

An act designating the pleadings to be

93-6802.2. Demurrers abolished. Demurrers and exceptions for insufficiency of a pleading shall not be used.

History: En. Sec. 2, Ch. 168, L. 1967; amd. Sec. 16, Ch. 420, L. 1975.

Repealing Clause

Section 3 of Ch. 168, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1975 amendment deleted "pleas" after "Demurrers."

93-6804. (9641) Repealed.

Repeal

Section 93-6804 (Sec. 1523, C. Civ. Proc. 1895), relating to timeliness of a demurrer

to a complaint, was repealed by Sec. 21, Ch. 420, Laws 1975.

93-6807, 93-6808. (9644, 9645) Repealed.

Repeal

Sections 93-6807, 93-6808 (Secs. 1526, 1527, C. Civ. Proc. 1895), relating to

demurrers to answers, and proceedings upon demurrer, were repealed by Sec. 21, Ch. 420, Laws 1975.

93-6811. (9648) Answer to amended pleadings. When a pleading is amended, the adverse party may answer it within such time, not exceeding two days, as the court may allow.

History: Earlier acts were Sec. 592, p. 159, Bannack Stat.; re-en. Sec. 698, p. 175, Cod. Stat. 1871; re-en. Sec. 758, 1st Div. Rev. Stat. 1879; re-en. Sec. 778, 1st Div. Comp. Stat. 1887.

This section en. Sec. 1530, C. Civ. Proc. 1895; re-en. Sec. 9648, R. C. M. 1921;

amd. Sec. 15, Ch. 420, L. 1975. Cal. C. Civ. Proc. Sec. 860.

Amendments

The 1975 amendment deleted "or demur to" after "may answer."

CHAPTER 69—JUSTICES' COURTS—PROVISIONAL REMEDIES—ARREST IN CIVIL ACTIONS—ATTACHMENT—CLAIM AND DELIVERY

Section 93-6903. A defendant arrested must be taken before the justice immediately.

93-6903. (9654) A defendant arrested must be taken before the justice immediately. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order, and if he is absent or unable to try the action, or if it appears to him by the affidavit of defendant that he is a material witness in the action, the officer must immediately take the defendant before another justice of the county, if there is another, and if not, then before a justice of an adjoining county, who must take jurisdiction of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

History: En. Sec. 562, p. 154, Bannack Stat.; re-en. Sec. 668, p. 171, Cod. Stat. 1871; re-en. Sec. 728, 1st Div. Rev. Stat. 1879; re-en. Sec. 748, 1st Div. Comp. Stat. 1887; amd. Sec. 1542, C. Civ. Proc. 1895; re-en. Sec. 7021, Rev. C. 1907; re-en. Sec. 9654, R. C. M. 1921; amd. Sec. 18, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 863.

Amendments

The 1973 amendment substituted "county" for "town, township, or city" in the middle of the section; and substituted "adjoining county" for "adjoining township" near the end of the section.

CHAPTER 73—JUSTICES' COURTS—JUDGMENT IN

Section 93-7302. Judgment of dismissal entered in certain cases without prejudice.
 93-7311. Abstract of judgment.

93-7302. (9680) Judgment of dismissal entered in certain cases without prejudice. Judgment that the action be dismissed without prejudice to a new action, may be entered with costs in the following cases:

1. to 3. *** [Same as parent volume.]

4. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection is taken and overruled, it is the cause of a reversal on appeal, and does not otherwise invalidate the judgment; if not taken at the trial, it is waived.

History: En. Sec. 605, p. 163, Bannack Stat.; re-en. Sec. 711, p. 179, Cod. Stat. 1871; re-en. Sec. 771, 1st Div. Rev. Stat. 1879; re-en. Sec. 791, 1st Div. Comp. Stat. 1887; amd. Sec. 1621, C. Civ. Proc. 1895; re-en. Sec. 7047, Rev. C. 1907; re-en. Sec. 9680, R. C. M. 1921; amd. Sec. 2, Ch. 34,

L. 1937; amd. Sec. 19, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 890.

Amendments

The 1973 amendment deleted "or township, town, or city" immediately preceding the first semicolon in paragraph 4.

93-7311. (9689) Abstract of judgment. The justice, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in substantially the following form (filling blanks according to the facts):

"State of Montana

County of _____

_____, plaintiff, v. _____, defendant.

In justice's court, before _____, justice of the peace, _____ county, _____, 19__ (inserting date of abstract). Judgment entered for plaintiff (or defendant) for \$_____, on the _____ day of _____. I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court, or (as the case may be) in the court of _____, justice of the peace, as it appears by his docket, now in my possession, as his successor in office.

_____, Justice of the Peace.

History: Ap. p. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1630, C. Civ. Proc. 1895; re-en. Sec. 7056 Rev. C. 1907; re-en. Sec.

9689, R. C. M. 1921; amd. Sec. 20, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 897.

Amendments

The 1973 amendment substituted "county" for "township (city or town)" in the caption of the abstract.

CHAPTER 74—JUSTICES' COURTS—EXECUTION FROM

Section 93-7402. Form of execution.

93-7402. (9694) Form of execution. The execution must be directed to the sheriff or to a constable of the county, and must be subscribed by the justice and bear date the day of its issuance. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when,

it was rendered; the amount of the judgment, if it be for money; and if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the sheriff or constable as are required by the provisions of sections 93-5801 to 93-5845, in an execution to the sheriff, except that it shall not direct the officer to in any manner levy upon or satisfy the judgment, or any interest thereon, from any real property.

History: En. Sec. 616, p. 165, Bannack Stat.; amd. Sec. 722, p. 181, Cod. Stat. 1871; re-en. Sec. 782, 1st Div. Rev. Stat. 1879; re-en. Sec. 802, 1st Div. Comp. Stat. 1887; amd. Sec. 1641, C. Civ. Proc. 1895; amd. Sec. 1641, p. 243, L. 1897; re-en. Sec. 7061, Rev. C. 1907; re-en. Sec. 9694,

R. C. M. 1921; amd. Sec. 21, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 902.

Amendments

The 1973 amendment deleted "and the township, town, or city" following "and of the county" in the second sentence.

CHAPTER 76—JUSTICES' COURTS—DOCKETS

Section 93-7605. Proceedings when office becomes vacant and before a successor is appointed.

93-7607. Justice elected to fill vacancy.

93-7605. (9707) Proceedings when office becomes vacant and before a successor is appointed. If the office of a justice become vacant by his death or removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the county, to be by him delivered to the successor of such justice. If there is no other justice in the county, then the docket and papers of such justice must be deposited in the office of the county clerk, to be by him delivered to the successor in office of the justice.

History: En. Sec. 1664, C. Civ. Proc. 1895; re-en. Sec. 7074, Rev. C. 1907; re-en. Sec. 9707, R. C. M. 1921; amd. Sec. 22, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 915.

Amendments

The 1973 amendment substituted "county" for "township, town, or city," near the beginning of the first sentence; and substituted "county" for "township" near the end of the first sentence and near the beginning of the second sentence.

93-7607. (9709) Justice elected to fill vacancy. The justice elected to fill a vacancy is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same county from that time is the successor.

History: En. Sec. 1666, C. Civ. Proc. 1895; re-en. Sec. 7076, Rev. C. 1907; re-en. Sec. 9709, R. C. M. 1921; amd. Sec. 23, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 917.

Amendments

The 1973 amendment substituted "county" for "township, town, or city" near the end of the section.

CHAPTER 77—JUSTICES' COURTS—GENERAL PROVISIONS

Section 93-7704. Calling another justice, when, by whom.

93-7709. Special constables—appointment.

93-7712. Depositions—how taken.

93-7704. (9714) Calling another justice, when, by whom. (1) Disqualification. When a justice of the peace is disqualified from acting on

any action because of the application of subsection (1), (2), or (3) of section 93-901, he shall either transfer the action to another justice court in the same county or call a justice from a neighboring county to preside in his behalf, who while so acting is vested with the power of the justice for whom he so holds court.

(2) Illness or absence. In case of sickness, disability, or absence of a justice for such a period of time that the county commissioners of the county find that there is a delay in the proper administration of justice or upon the written request of the county attorney, another justice, if there is one readily available, or a police judge or some other qualified person shall be called to hold court for the absent justice until the return of the absent justice, and when so called and so acting that person is vested with the power of the justice for whom he so holds court.

(3) Vacation. During the time, when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county shall be authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the county commissioners shall handle the situation in the same manner as if the justice were sick or absent.

(4) Necessary expenses. Whenever a justice of the peace or other person is called to preside over the court of a justice who is disqualified, sick, or absent, that visiting justice of the peace or other person shall be paid all necessary and actual expenses including mileage and if that acting justice is not a justice of the peace receiving a salary then that acting justice shall receive such compensation as is proper for the time involved. Such expenses shall be a proper charge against the county where the court is held.

(5) Court docket entries. When another justice, or any other qualified person is called to preside in a justice court proper entries of all proceedings must be made in the docket of the justice for whom the visiting justice or person holds court. When the appointment is made by order of the county commissioners the order shall be placed in the court docket.

(6) Jurisdiction of called in person. When called to preside over a justice court as above provided the visiting justice of the peace or other qualified person while acting as justice of the peace is vested with all the power of the justice for whom he so holds court.

History: En. Sec. 626, p. 168, Bannack Stat.; re-en. Sec. 732, p. 184, Cod. Stat. 1871; re-en. Sec. 792, 1st Div. Rev. Stat. 1879; re-en. Sec. 812, 1st Div. Comp. Stat. 1887; amd. Sec. 1683, C. Civ. Proc. 1895; re-en. Sec. 7081, Rev. C. 1907; re-en. Sec. 9714, R. C. M. 1921; amd. Sec. 24, Ch. 491, L. 1973; amd. Sec. 17, Ch. 420, L. 1975. Cal. C. Civ. Proc. Sec. 922.

Amendments

The 1973 amendment substituted "county, or adjoining county" for "township, town, or city, or adjoining township" in the middle of the first sentence.

The 1975 amendment substituted the present section for the former general section providing for a pro tem justice of the peace. For prior text, see parent volume and 1973 amendment note.

93-7709. (9719) Special constables—appointment. If in any county there should be no duly appointed or qualified constable, the board of county commissioners in the county may, at the request of a party, after being satisfied that it is expedient to do so, specially depute any proper

person of suitable age not interested in the action to serve a summons, with or without an order to arrest the defendant, or with or without a writ of attachment, or to serve an execution. The justice shall be liable upon his official bond for all official acts of the person so deputed. Such deputation shall be in writing made on the process, and a note thereof made on the justice's docket.

History: En. Sec. 627, p. 168, Bannack Stat.; re-en. Sec. 733, p. 184, Cod. Stat. 1871; re-en. Sec. 793, p. 187, 1st Div. Rev. Stat. 1879; re-en. Sec. 813, 1st Div. Comp. Stat. 1887; amd. Sec. 1688, C. Civ. Proc. 1895; amd. Sec. 1, p. 138, L. 1899; re-en. Sec. 7086, Rev. C. 1907; re-en. Sec. 9719, R. C. M. 1921; amd. Sec. 25, Ch. 491, L. 1973; amd. Sec. 8, Ch. 253, L. 1975.

Amendments

The 1973 amendment substituted "in the county" for "in such township" after

"justice of the peace" in the first sentence.

The 1975 amendment substituted "county" for "township" at the beginning of the first sentence; deleted "elected" before "appointed or qualified constable"; deleted "but not otherwise" after "constable" in the first sentence; substituted "board of county commissioners" for "justice of the peace" in the first sentence; and made minor changes in phraseology and punctuation.

93-7712. (9722) Depositions—how taken. Depositions to be used in justices' courts shall be taken as provided in Rules 26 and 28 to 32, inclusive of the Montana Rules of Civil Procedure.

History: En. Sec. 1691, C. Civ. Proc. 1895; re-en. Sec. 7089, Rev. C. 1907; re-en. Sec. 9722, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1967.

Amendments

The 1967 amendment substituted

"shall" for "may" after "justices' courts"; and substituted "Rules 26 and 28 to 32, inclusive of the Montana Rules of Civil Procedure" for "sections 93-1801-1 to 93-1801-6."

CHAPTER 79—JUSTICES' COURTS—APPEALS FROM, TO DISTRICT COURTS

93-7907. (9760) Procedure on appeal, etc.

Dismissal of Appeal

Where defendant filed notice of appeal of adverse verdict in justice court with an undertaking on May 8, 1969 but took no further action, district court properly

granted plaintiff's motion to dismiss for unnecessary delay on July 1, 1970, since it was appellant's burden as moving party to bring appeal on for hearing. *Eide Ins. v. Correll*, 156 M 167, 478 P 2d 272.

CHAPTER 80—SUPREME COURT—APPEALS TO

- Section 93-8001. How judgments and orders may be reviewed.
 93-8002. Party aggrieved may appeal—names of parties.
 93-8013. Deposit in lieu of undertaking.

93-8001. (9729) How judgments and orders may be reviewed. A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in sections 93-7901 to 93-7908, and by the Rules of Appellate Civil Procedure, and not otherwise.

History: En. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096,

Rev. C. 1907; re-en. Sec. 9729, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 936.

Advisory Committee's Note

Subdivisions (c), (d), (e) of Rule 41, M. R. App. Civ. P. amend this section,

and sections 93-8002 and 93-8013 which contain references to appeals from justices' courts to district courts, so as to preserve the existing procedure applicable to such appeals.

Amendments

The 1965 amendment substituted "by the Rules of Appellate Civil Procedure" for "93-8001 to 93-8023" after "93-7908 and" and made a minor change in punctuation.

93-8002. (9730) Party aggrieved may appeal—names of parties. A party aggrieved may appeal in the cases prescribed in sections 93-7901 to 93-7908 and the Rules of Appellate Civil Procedure.

History: En. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 938.

Amendments

The 1965 amendment substituted "the Rules of Appellate Civil Procedure" for "93-8001 to 93-8023" at the end of the present section and omitted a former second sentence which read: "The party appealing is known as the appellant, and the adverse party as the respondent."

93-8003 to 93-8006. (9731 to 9734) Superseded — M. R. App. Civ. P., Rules 1 and 4 to 6.

Supersession

These sections (Ap. p. Secs. 251, 252, 262, pp. 95, 97, Bannack Stat.; Secs. 320, 331, pp. 199, 201, L. 1867; Secs. 408 to 410, 431, pp. 150, 151, 157, L. 1877; Sec. 1, pp. 146, 147, L. 1899; Secs. 10, 11, Ch. 225, L. 1921; Sec. 1, Ch. 39, L. 1925;

Sec. 1, Ch. 41, L. 1941), relating to appealable judgments and orders, the taking of an appeal and the time therefor, and the undertaking or deposit on appeal, are superseded by M. R. App. Civ. P., Rules 1 and 4 to 6.

93-8011, 93-8012. (9739, 9740) Superseded—M. R. App. Civ. P., Rules 6 and 7.

Supersession

These sections (Ap. p. Secs. 268, 269, p. 99; Sec. 337, p. 202, L. 1867; Sec. 415, p. 152, L. 1877), relating to stay of pro-

ceedings and undertaking on appeal, are superseded by M. R. App. Civ. P., Rules 6 and 7.

93-8013. (9741) Deposit in lieu of undertaking. In all cases where an undertaking is required on appeal by the provisions of sections 93-7901 to 93-7908, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all such cases the undertaking or deposit may be waived by the written consent of the respondent.

History: En. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R. C. M. 1921; amd. Sup. Ct. Ord. 11020,

eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 948.

Amendments

The 1965 amendment rewrote this section. For previous text, see parent volume.

93-8014 to 93-8025. (9742 to 9753) Superseded—M. R. App. Civ. P.

Supersession

These sections (Secs. 260, 271, 273, pp. 96, 99, 100, Bannack Stat.; Sec. 342, p. 204, L. 1867; Secs. 418, 426 to 428, pp. 153, 156, L. 1877; Secs. 1733 to 1735, 1737,

1739 to 1744, C. Civ. Proc. 1895; Sec. 2, Ch. 35, L. 1907; Sec. 3, Ch. 42, L. 1907; Sec. 1, Ch. 47, L. 1909; Secs. 12 to 14, Ch. 225, L. 1921; Sec. 1, Ch. 19, L. 1925; Sec. 1, Ch. 87, L. 1929), relating to

appeals from district courts, are superseded by the Rules of Appellate Civil Procedure. For designation of super-

seding rule see M. R. App. Civ. P., Table B.

CHAPTER 86—COSTS AND DISBURSEMENTS—COST BILL— SUIT IN FORMA PAUPERIS

Section 93-8601.1. Contractual right to attorney fees to be reciprocal.

93-8625. Poor person may sue or defend without costs.

93-8632. Costs to plaintiff in certain actions to enforce constitutional right to know.

93-8601.1. Contractual right to attorney fees to be reciprocal. Whenever by virtue of the provisions of any contract or obligation in the nature of a contract, made and entered into at any time after the effective date of this act, one party to such contract or obligation has an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right shall bring an action upon the contract or obligation, then in any action on such contract or obligation all parties to the contract or obligation shall be deemed to have the same right to recover attorney fees, and the prevailing party in any such action, whether by virtue of the express contractual right, or by virtue of this act, shall be entitled to recover his reasonable attorney fees from the losing party or parties.

History: En. Sec. 1, Ch. 259, L. 1971.

Title of Act

An act to extend a contractual right to attorney fees granted to one party to a contract to the prevailing party in any lawsuit on such contract whether or not the contract expressly provides for such fees as to such prevailing party.

Real Estate Listings Agreement

Seller who successfully defended suit by real estate broker for payment of sales commission was entitled to recover attorney's fees. *Flaherty v. Hensley*, — M —, 529 P 2d 1389.

93-8602. (9787) When allowed, of course, to the plaintiff.

Attorney's Fees

On foreclosure of mortgage, federal tax lien took priority over attorney's fees allowed under section 93-8613 since attorney's lien failed to meet "choate" test at

the time the amount of federal taxes owed on the property was fixed. *First Nat. Bank of Lewistown v. Tilzey*, 238 F Supp 750.

93-8605. (9790) When the several defendants are not united, etc.

References

State ex rel. Gage v. District Court, 148 M 284, 419 P 2d 746, 748.

93-8606. (9791) Costs of appeal discretionary with the court, etc.

References

Stalcup v. Montana Trailer Sales & Equipment Co., 146 M 494, 409 P 2d 542.

93-8613. (9798) Counsel fees on foreclosure.

Intervenor

Where party intervened in action to foreclose mortgage in an effort to have title quieted in his behalf as against both

mortgagee and mortgagor, it was error to award intervenor judgment for attorney's fees under this section since intervenor qualified as neither mortgagee bringing

foreclosure action nor as possible successful mortgagor defending such action. *Nikles v. Barnes*, 153 M 113, 454 P 2d 608.

Priority of Claim

On foreclosure of mortgage, federal tax

lien took priority over attorney's fees allowed under this section since attorney's lien failed to meet "choate" test at the time the amount of federal taxes owed on the property was fixed. *First Nat. Bank of Lewistown v. Tilzey*, 238 F Supp 750.

93-8618. (19802) What are costs and disbursements.

Attorney Fees

Attorney fees are not included as costs under this section, so that if such costs are not allowed under section 21-137, which requires showing by motion that wife cannot take an appeal without the allowance, she is not entitled to them on execution under section 93-8621. *State ex rel. Sowerwine v. District Court*, 145 M 375, 401 P 2d 568.

Attorney fees which amounted to only about 10% of the judgment recovered were not excessive nor wrongfully awarded. *Haggerty v. Selsco*, — M —, 534 P 2d 874.

Deposition Expenses

Cost to defendant of taking plaintiff's depositions for convenience of defendant's counsel could not be included in bill of costs where never filed with the court and plaintiff had no practical means of securing a copy; it was obviously a dis-

covery deposition for defendant's own benefit. *Johnson v. Furgeson*, 158 M 170, 489 P 2d 1032; *Lovely v. Burroughs Corp.*, — M —, 527 P 2d 557.

Depositions

In action contesting assessment of net proceeds tax of mining industry, board of equalization was properly assessed costs of contestant's expense of taking deposition of secretary of board of equalization where contestant prevailed and deposition was for the benefit of the court and both parties, having been introduced into evidence by agreement of both parties. *Pfizer, Inc. v. Madison County*, 161 M 261, 505 P 2d 399.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487; *State ex rel. Ald, Inc. v. District Court*, 147 M 221, 410 P 2d 944.

93-8621. (19805) Costs on appeal—how claimed.

Execution Void

In divorce proceeding, inclusion in memorandum of both allowable statutory costs under section 21-137 and attorney's fee, to which the wife was not entitled because of failure to file motion on appeal, constituted noncompliance with this sec-

tion and made the execution void. *State ex rel. Sowerwine v. District Court*, 145 M 375, 401 P 2d 568.

References

State ex rel. Ald, Inc. v. District Court, 147 M 221, 410 P 2d 944.

93-8625. (19809) Poor person may sue or defend without costs. Any person may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state who will file an affidavit stating that he has a good cause of action or defense, that he is unable to pay the costs, or procure security to secure the same; then it is hereby made the duty of the officers of the courts and administrative tribunals to issue all writs and serve the same, and perform all services in the action, without demanding or receiving their fees in advance.

History: En. Sec. 2, p. 71, L. 1869; re-en. Sec. 563, p. 150, Cod. Stat. 1871; amd. Sec. 1, p. 40, Ex. L. 1873; amd. Sec. 503, p. 173, L. 1877; re-en. Sec. 503, 1st Div. Rev. Stat. 1879; re-en. Sec. 516, 1st Div. Comp. Stat. 1887; re-en. Sec. 1873, C. Civ. Proc. 1895; re-en. Sec. 7176, Rev. C. 1907; re-en. Sec. 9809, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1971; amd. Sec. 1, Ch. 90, L. 1973.

Preamble

Chapter 90 of Laws 1973 contained a

preamble which read: "WHEREAS, section 93-8625, R. C. M. 1947, gives the right to sue or defend in any of the courts of this state to poor persons without costs, amendment should be made to remove any ambiguity as to whether this would also include administrative tribunals."

Amendments

The 1971 amendment inserted "or defend" and "or defense."

The 1973 amendment inserted "and administrative tribunals" in two places.

93-8632. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce his rights under article II, section 9 of the Montana constitution may be awarded his costs and reasonable attorneys' fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975.

Title of Act

An act to award costs and reasonable

attorneys' fees to a plaintiff who brings a successful action under the right to know provision of the Montana constitution.

CHAPTER 89—UNIFORM DECLARATORY JUDGMENTS ACT

93-8901. (9835.1) Scope.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Declaratory Judgments Act: Oklahoma and Virginia.

Contracts

In proceeding under this act, court's resolution of ambiguity on face of contract constituted construction, not contract reformation. *Heller v. Osburnsen*, — M —, 510 P 2d 13.

Supreme Court

Supreme court could accept original jurisdiction in suit for declaratory judgment where statute which taxed nonresident contractors indiscriminately was declared unconstitutional, since supreme court was a court of record and under its own rules could accept original jurisdiction in emergency situations. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Supreme court could entertain original

action for declaratory judgment on calling, election of delegates to and implementation of constitutional convention required by vote of the electors in view of necessity for legislature to act within 60-day session then in progress. *Forty-Second Legislative Assembly v. Lennon*, 156 M 416, 481 P 2d 330.

Termination of Annexation Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. This chapter did not furnish the protestants a plain, speedy and adequate remedy. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 757.

References

Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713.

93-8906. (9835.6) Discretionary.

Discretion of Court

In absence of showing of abuse of discretion, refusal of lower court to rule on issue for reason that decree would not terminate controversy or remove uncertainty will not be reversed. *Helena Valley Irrig. Dist. v. State Highway Commission*, 150 M 192, 433 P 2d 791.

Dismissal of Action

Court did not abuse its discretion in dismissing insurance company's action for

declaratory judgment that defendant's policy was void because obtained by fraud, since, under section 93-8911, there were possible parties not joined, defendant having been in an accident several months prior to expiration of the policy, and under this section, court could refuse to enter the judgment on the basis that it would not terminate the controversy as to all parties. *Empire Fire & Marine Ins. Co. v. Goodman*, 147 M 396, 412 P 2d 569.

93-8909. (9835.9) Jury trial.

References

Mahan v. Hardland, 147 M 78, 410 P 2d 156.

93-8911. (9835.11) Parties.

Dismissal of Action

Court could take into account this sec-

tion in refusing to grant declaratory judgment in favor of insurance company

which claimed that defendant's policy was void when accident in which he was involved occurred because there were other parties not joined and therefore the declaratory judgment would not terminate the controversy should other parties sue de-

fendant. *Empire Fire & Marine Ins. Co. v. Goodman*, 147 M 396, 412 P 2d 569.

References

Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713.

93-8912. (9835.12) Construction.

References

Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713.

CHAPTER 90—CERTIORARI (WRIT OF REVIEW)

93-9002. (9837) When and by what courts granted.

Zoning Resolution

Although scope of review upon writ of certiorari is ordinarily limited to whether the inferior tribunal has exceeded its jurisdiction, further inquiry is permitted by the provisions of section 16-4706(8) and (11), which grant the district courts a broader scope of review than the gen-

eral Montana statutes pertaining to certiorari. *Bryant Development Assn. v. Dagle*, — M —, 531 P 2d 1320.

References

Mailey v. Board of County Commrs., 142 M 505, 385 P 2d 74.

93-9004. (9839) The writ to be directed to the inferior tribunal, etc.

Direction of Writ

Although writ of certiorari was properly directed to the board of adjustment, the board is not the defendant, and certain procedural difficulties could have been

avoided if the adverse party had been properly designated as defendant. *Bryant Development Assn. v. Dagle*, — M —, 531 P 2d 1320.

93-9008. (9843) The review under the writ, extent of.

References

Mailey v. Board of County Commrs., 142 M 505, 385 P 2d 74.

CHAPTER 91—MANDAMUS (WRIT OF MANDATE)

93-9102. (9848) When and by what court issued.

Clear Legal Duty

Board of county commissioners was properly denied writ of mandate requiring sheriff to provide detailed itemized accounting of county funds received for furnishing board to prisoners of county jail since sheriff has no clear legal duty to provide such an accounting. *State ex rel. Lucier v. Murphy*, 156 M 186, 478 P 2d 273 (Decision prior to 1971 amendment of section 16-2818).

ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

Trial court properly denied writ of mandate, sought pursuant to this section, to require city to condemn private lands for use as public streets, since this section provides for performance of ministerial duty and not duty or power that requires exercise of discretion. *State ex rel. Wiedman v. City of Kalispell*, 154 M 31, 459 P 2d 694.

Discretionary Actions

Mandamus lies only to compel performance of an act, not to correct action already done, so that where state board of land commissioners exercised discretion in awarding lease of land to lowest bidder, mandamus was not the proper writ to pursue in seeking a remedy. *State*

Equitable Relief

Although writ of mandamus was not a permissible remedy to correct or undo action already taken, plaintiff who was disqualified from voting because of violation of federal liquor laws was entitled to equitable relief and adjudication of his rights. *Melton v. Oleson*, — M —, 530 P 2d 466.

License for Mobile Home Court

Action of town council in refusing to issue a mobile home court license until petitioner had removed a house which encroached onto a public alley, was not an abuse of discretion, and mandamus will not lie to compel the issuance of the license. *State ex rel. Barnes v. Town of Belgrade*, — M —, 524 P 2d 1112.

Termination of Annexation Proceedings

Where a majority of the resident free-

holders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings, took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgments Act (93-8901 to 93-8916) did not furnish the protestants a plain, speedy and adequate remedy. *State ex rel. Konen v. City of Butte*, 144 M 95, 394 P 2d 753, 757.

93-9103. (19849) Writ—when and upon what to issue.**Adequacy of Other Remedy**

Where subsequent tax sale certificates purchaser gave notice of intention to apply for tax deed on certain date and prior certificates purchaser tendered payment to county treasurer for redemption of such subsequent certificates but his tender was refused, writ of mandate was proper remedy to effect his redemption, since no other available remedies would be certain, plain, adequate, or speedy. *State ex rel. Burkhartsmeier Bros. v. McCormick*, — M —, 510 P 2d 266.

Appealable Matters

Engineer seeking registration from state board had no right to a writ of mandamus where discretion of the board was subject to review under section 66-2345. *Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors*, 147 M 271, 411 P 2d 744.

Labor Standards Division

Petitioner's right to file action at law against employer for nonpayment of wages was not an alternative remedy to a mandamus petition to compel commissioner of labor to hold a hearing, since the alternative, plain, speedy, and adequate remedy at law must be one which can be pursued by petitioner to compel the performance of the official duty. *Burgess v. Softich*, — M —, 535 P 2d 178.

Mandamus to Compel Disqualification of Justice of the Peace

Since section 95-2009, by providing for a trial de novo in the district court, provided a plain, adequate and speedy remedy at law, mandamus did not lie to compel justice of the peace to honor motion for disqualification. *Bailey v. State*, — M —, 517 P 2d 708.

93-9109. (19855) Motion for new trial—where made.**Motion Not Required**

This section does not require motion for new trial in order to appeal from a grant of mandamus, but merely sets out

the place of filing for a motion for new trial. *State ex rel. Bennett v. Dowdall*, 157 M 11, 482 P 2d 572.

93-9112. (19858) Damages, costs and peremptory mandate, etc.**Attorney Fees**

Although writ of mandate was issued by district court, since it was not a permissible remedy, and the decision in favor of the plaintiff was made on the basis of equitable relief and adjudication of his rights, the award of attorney fees will be set aside. *Melton v. Oleson*, — M —, 530 P 2d 466.

Damages Incidental to Pleading

After repeated refusals by county to follow assessment procedures prescribed by

state board of equalization, and after other delays and hindrances by the county, including the filing of sham pleadings, Supreme Court will, if there is further delay in complying with writ of mandamus, consider assessing costs and damages under this section. *State ex rel. State Board of Equalization v. Price*, 157 M 134, 483 P 2d 284.

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

CHAPTER 92—PROHIBITION—WRIT OF

93-9201. (19861) Prohibition defined.

Judicial Error Required

Writ of prohibition was issued, pursuant to this section, where district court had acted beyond its jurisdiction by enjoining board of equalization from revising grading and valuation on nonirrigated farm land pursuant to section 84-429.7 et seq. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

Municipal Corporation

Lower court properly refused petition for writ of prohibition against city acting within jurisdiction since writ lies only when municipal corporation acts without or in excess of jurisdiction. State ex rel.

Pat Griffin Co. v. City of Butte, 151 M 546, 445 P 2d 739.

Public Service Commission

Since federal price-freeze order did not prevent rate hearings by the public service commission, though it did prevent putting increases into effect, commission had jurisdiction to hold hearings and writ of prohibition was improper. State ex rel. Department of Public Service Regulation v. District Court, 158 M 88, 488 P 2d 1147.

References

State ex rel. Belwin, Inc. v. Davison, 148 M 345, 420 P 2d 842, 844.

CHAPTER 97—FORCIBLE ENTRY AND UNLAWFUL DETAINER—ACTIONS FOR

Section 93-9705. What courts have jurisdiction.

93-9706. Parties defendant.

93-9703. (19889) Unlawful detainer defined.

Agricultural Tenant Holding Over

Statute gives agricultural tenant right to hold over for no other purpose than to harvest crops and protect investment and does not mean that tenant can exercise option to purchase contained in expired lease. Miller v. Meredith, 149 M 125, 423 P 2d 595.

Landlord-tenant Relationship Required

An action for unlawful detainer can succeed only where the relation of landlord-tenant exists. Kransky v. Hensleigh, 146 M 486, 409 P 2d 537.

Unlawful Ejectment

In case of unlawful ejectment, plaintiff, who had farmed land for three years, paying one third of each crop as rent, was not a sharecropper but a tenant with an interest in the land for a term and it was proper for the judge to instruct the jury that if plaintiff held without notice to quit more than sixty days after expiration of his term he was deemed to be holding by permission of the defendant-landlords and not guilty of unlawful detainer. Kenfield v. Curry, 145 M 174, 399 P 2d 999.

93-9705. (19891) What courts have jurisdiction. The district court of the county in which the property, or some part of it, is situated, shall have jurisdiction of proceedings under this chapter; provided, that justices' courts, within their respective counties, shall have concurrent jurisdiction.

History: En. Sec. 2084, C. Civ. Proc. 1895; re-en. Sec. 7273, Rev. C. 1907; re-en. Sec. 9891, R. C. M. 1921; amd. Sec. 26, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 1163.

Amendments

The 1973 amendment substituted "count-

ties" for "towns, townships, or cities" near the end of the section.

Repealing Clause

Section 27 of Ch. 491, Laws 1973 read "Sections 25-303, 25-305, and 25-306, R. C. M. 1947, are repealed."

93-9706. (19892) Parties defendant. No person other than the tenant of the premises, and subtenant if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be non-

sued for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, is guilty of the offense charged, judgment must be rendered against such party. In case a defendant has become a subtenant of the premises in controversy, after the service of the notice provided for by part 2 of section 93-9703, upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action. In case a married person is a tenant or subtenant, failure to join such person's spouse shall constitute no defense; but in case the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant can only be enforced against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by his spouse. All persons who enter the premises under the tenant, after the commencement of the action, shall be bound by the judgment, the same as if he or they had been made party to the action.

History: En. Sec. 2085, C. Civ. Proc. 1895; re-en. Sec. 7274, Rev. C. 1907; re-en. Sec. 9892, R. C. M. 1921; amd. Sec. 58, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 1164.

Amendments

The 1975 amendment substituted "married person" for "married woman" in the third sentence; substituted "failure to join such person's spouse shall constitute no defense" for "her coverture shall con-

stitute no defense"; substituted "the spouse" for "her husband"; deleted "or unless she has separate property" after "spouse is not joined" in the third sentence; substituted "the tenant or subtenant" for "her" in the third sentence; substituted "property that is owned solely by the tenant or subtenant and not by his spouse" for "her separate property"; and made minor changes in phraseology and punctuation.

CHAPTER 98—CONTEMPTS

93-9801. (9908) What acts or omissions are contempts.

Criticism of Decisions

Bank president's statement that he was displeased with jury verdict against bank and that jurors could not expect to do business with bank did not constitute contempt under subsection 9, since jurors did continue to do business with bank and since statement came twenty-two days after final disposition of case and could

not have interfered with court proceedings. *State ex rel. Polish v. District Court Third Judicial District in and for County of Powell*, 156 M 220, 478 P 2d 270.

References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-9803. (9910) A contempt committed in the presence of the court, etc.

Recital of Facts in Order

Order of contempt that failed to specify facts that constituted contempt before the court was deficient under this section,

since it did not provide opportunity for appellate review. *State ex rel. Shea v. District Court*, 156 M 266, 479 P 2d 281.

93-9810. (9917) Judgment and penalty, if guilty.

Excessive Penalty

District court's sentence of ten days' imprisonment for contempt exceeded

jurisdiction of such court as vested in it by this section. *Fuchs v. District Court*, 153 M 485, 458 P 2d 776.

CHAPTER 99—EMINENT DOMAIN

Section 93-9902.	What are public uses.
93-9902.1.	Policy on surface mining or open pit mining of coal.
93-9905.	Facts necessary to be found before condemnation.
93-9908.	The complaint and its contents.
93-9911.	Power of court—preliminary condemnation order.
93-9912.	Appointment and meeting of commissioners.
93-9913.	The date with respect to which compensation shall be assessed.
93-9921.1.	Necessary expenses of litigation.
93-9927.	Relocation assistance—purpose of act.
93-9928.	Definition of terms in relocation assistance law.
93-9929.	Payments to displaced persons—moving expense allowance—business losses.
93-9930.	Additional payments for displacement from dwelling owned by occupant.
93-9931.	Additional payments for displacement from rented dwelling.
93-9932.	Relocation advisory services.
93-9933.	Assurance of availability of suitable replacement dwellings.
93-9934.	Relocation costs included in project costs—replacement housing.
93-9935.	Public assistance eligibility unimpaired—tax exemption of payments.
93-9936.	Appeal to district court from administrative determination.
93-9937.	Appraisal and negotiation policies—time allowed to move—condemnation proceedings.
93-9938.	Advancement of closing costs and taxes incurred by owner.
93-9939.	Reimbursement of costs when condemnation proceedings abandoned.
93-9940.	Expenses included in inverse condemnation judgment or settlement.
93-9941.	Acquisition of buildings and improvements affected—payments to tenant.
93-9942.	Duplication of eminent domain payments not intended.
93-9943.	New rights and powers not created.
93-9944.	Application to all federally assisted programs.

93-9902. (9934) What are public uses. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1 to 3. *** [Same as parent volume.]

4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water. Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water. Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

6 to 14. * * * [Same as parent volume.]

15. To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others; provided, however, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use and eminent domain may not be exercised for this purpose.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R. C. M. 1921; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973; amd. Sec. 1, Ch. 375, L. 1974. Cal. C. Civ. Proc. Sec. 1238.

Amendments

The 1973 amendment added the proviso to subdivision 15.

The 1974 amendment added the provisos to the end of subdivisions 4 and 5.

Electric Power

Legislature has specifically declared that an electric power line is public use for which private property may be taken by eminent domain proceedings under this section, and public use is not confined to actual use by public, but is measured in terms of right of public to use proposed facilities for which condemnation is sought. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

93-9902.1. Policy on surface mining or open pit mining of coal. For the following reasons the state's power of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others:

(1) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals, and affecting large areas of land and large numbers of people;

(2) That in many areas of Montana set forth in (a) hereinabove, the title to the surface is vested in an owner other than the mineral owner, and that the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and that to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines, and is also contrary to public policy as set forth in paragraph four (4) herein below;

(3) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain;

(4) That it is the public policy of the state to encourage and foster diversity of land ownership and that the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

History: En. 93-9902.1 by Sec. 2, Ch. 311, L. 1973.

Title of Act

An act amending section 93-9902,

R. C. M. 1947, to declare that the extraction of coal by strip mining or open pit mining is not a public use; and setting forth the public policy therefor.

93-9904. (9936) Private property defined—classes enumerated.**Discretionary Actions**

Action brought to compel state highway commission to construct two interchanges on new interstate highway near town, instead of one interchange as planned, was improperly brought under this section since this section pertains to eminent domain proceedings and issues presented by action were matters of administrative law under section 32-2406. *Erie v. State ex rel. State Highway Commission*, 154 M 150, 461 P 2d 207, distinguished in 155 M 39, 47, 466 P 2d 594.

Judicial Review

In condemnation proceeding involving access to portion of farm divided by interstate highway, district court had power to require state to incorporate in its construction plans such structures as would allow two-lane access across county road where access road benefited general public as well as private property owner; but district court did not have power to require state to submit such plans to court for its approval since such matters were within purview of activities of highway commission. *State ex rel. State Highway Commission v. Lavoie*, 155 M 39, 466 P 2d 594, explained in 159 M 248, 496 P 2d 1140, 1143.

93-9905. (9937) Facts necessary to be found before condemnation. 1 and 2. * * * [Same as parent volume.]

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use. The plaintiff or defendant, or any party interested in the proceedings, can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 1241.

Advisory Committee's Note

Subdivision (f) Rule 41, M. R. App. Civ. P., amends the provision of subdivision 3 of this section to permit the district court to stay proceedings on appeals in eminent domain cases, as is permitted by Rule 7(a) of these rules in other cases.

More Necessary Public Use

Requirement under section 93-9906 that taking of private property by condemnation proceedings must be compatible with greatest public good and least private injury applies specifically to easements and rights of way under this section. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

Public property held by city and taken by state for more necessary public use should be taken and compensated as if it had been taken from a private owner. *City of Three Forks v. State Highway Commission*, 156 M 392, 480 P 2d 826.

Underpass

Where 40.89 acres of ranch land were taken by the state highway commission as a right of way for an interstate highway, consisting of four lanes in width and fully controlled access, which split the remaining land into two divisions, leaving 432.69 acres, on which farm headquarters was located, on the north side of the highway and 393.42 acres on the south side of the highway, trial court in its preliminary order of condemnation properly ordered the commission to construct and maintain at its own expense an underpass leading from one side of the highway to the other. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 496.

See Tables A, B, C, M. R. App. Civ. P. for reference to other amendments.

Amendments

The 1965 amendment added the exception at the end of the section.

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, while the commission had only to establish that the taking

of the property was reasonably necessary for rebuilding the highway and that their decision appeared to be compatible with the greatest public good and least private injury on the basis of conflicting evidence. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

Highway department resolution of public interest and necessity established a disputable presumption that requirements for condemnation had been satisfied, which presumption was not overcome by evidence that a possible alternative route might have been selected. *State, Department of Highways v. Higgins*, — M —, 530 P 2d 776.

Condemnor's Discretion

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283, distinguished in *State Highway Commission v. Danielsen*, 146 M 539, 409 P 2d 443; 155 M 39, 47, 466 P 2d 594.

More Necessary Public Use

Condemnation of city-owned property

between sidewalk and boundary of school yard for the purpose of erecting a fence was a more necessary public use, in view of the protection for the children. *State ex rel. Smart v. City of Big Timber*, — M —, 528 P 2d 688.

Necessity of Use

The word "necessary" as used in this section does not mean that the property must be indispensable to the proposed project, but that it must be reasonably requisite and proper for the accomplishment of the purpose for which it is sought under the peculiar circumstances of each case. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Before district court may order condemnation, this section requires that it must find that proposed taking is necessary to public use under circumstances of individual case. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

Where an easement to remove obstructions and prevent future obstructions would have been sufficient to assure safe flight to and from an airport runway, preliminary order of condemnation of fee simple was error. *Silver Bow County v. Hafer*, — M —, 532 P 2d 691.

References

State Highway Commission v. Danielson, 146 M 539, 409 P 2d 443.

93-9906. (9938) Parties may make location—may enter, etc.

Compatible with Public Good

Where power company had studied alternate routes for power lines, surveyed surrounding area and determined that best possible route for such line was across defendant's property, utility had complied with this section in that taking of private property was compatible with

greatest public good and least private injury. *Montana Power Co. v. Bokma*, 153 M 390, 457 P 2d 769.

References

State Highway Commission v. Danielson, 146 M 539, 409 P 2d 443.

93-9908. (9940) The complaint and its contents. The complaint must contain:

1. * * * [Same as parent volume.]
2. The names of all owners, mortgagees and lien holders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants.
- 3 to 5. * * * [Same as parent volume.]
6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the com-

plaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in section 60-804.

History: En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R. C. M. 1921; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955; amd. Sec. 1, Ch. 197, L. 1973; amd. Sec. 206, Ch. 253, L. 1974. Cal. C. Civ. Proc. Sec. 1244.

Amendments

The 1973 amendment inserted "mortgagees and lien holders of record" following "owners," "any other" before "claimants" and "of record" following "property" in subdivision 2.

The 1974 amendment substituted "the board of oil and gas conservation as set forth in section 60-804" for "the state oil and gas conservation commission as set forth in section 93-804" at the end of subdivision 6.

93-9909. (9941) Summons, what to contain, etc.

Service of Complaint with Summons

Requirement that a copy of the complaint must be served with the summons is effectively met, so long as both are served at least twenty days prior to the

time designated for hearing, and there is no requirement that they be served on the same day. State Highway Commission v. District Court, 160 M 35, 499 P 2d 1228, explained in 510 P 2d 9, 11.

93-9911. (9943) Power of court—preliminary condemnation order. The court or judge has power:

1 to 4. *** [Same as parent volume.]

5. If the property sought to be appropriated is a sand, stratum or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir, and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the said underground gas storage reservoir, and for the use in connection with the creation, operation and maintenance thereof, and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property; provided, however, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas.

The court shall appoint three (3) persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

History: Ap. p. Sec. 589, p. 193, L. 1877; re-en. Sec. 589, 1st Div. Rev. Stat. 1879; re-en. Sec. 607, 1st Div. Comp. Stat. 1887; amd. Sec. 2220, C. Civ. Proc. 1895; re-en. Sec. 7340, Rev. C. 1907; re-en. Sec. 9943, R. C. M. 1921; amd. Sec. 4, Ch. 245, L. 1953; amd. Sec. 10, Ch. 259, L. 1955; amd. Sec. 3, Ch. 234, L. 1961; amd. Sec. 207, Ch. 253, L. 1974. Cal. C. Civ. Proc. Sec. 1247.

Amendments

The 1974 amendment substituted "board of oil and gas conservation" for "oil and gas conservation commission of the state of Montana" near the beginning of the final paragraph.

Repealing Clause

Section 208 of Ch. 253, Laws 1974 read "Sections 28-101, 28-102, 28-107, 28-126, 28-132, 28-409, 46-2303 through 46-2306, 46-2319, 46-2328, 60-125, 60-137, 60-138, 60-146, 60-147, 81-1401.1, 81-1401.2, 81-1403, 81-1505, 82-3001 through 82-3003, 82A-1502 through 82A-1506, 82A-1507.1, 82A-1510, 82A-1511, 82A-1512, 89-103, 89-103.1, 89-103.3, 89-103.4, 89-103.5, 89-103.6, 89-103.8, 89-107, 89-108, 89-126, 89-129 through 89-139, 89-311, 89-827, and 89-828 are repealed."

Access Rights

In condemnation proceeding involving access to portion of farm divided by interstate highway, district court had power to require state to incorporate in its con-

struction plans such structures as would allow two lane access across county road; but district court did not have power to require state to submit such plans to court for its approval since such matters were within purview of activities of highway commission. State ex rel. State Highway Commission v. Lavoie, 155 M 39, 466 P 2d 594.

Necessity of Use

Before district court may order condemnation, this section requires that it must find that proposed taking is necessary to public use under circumstances of individual case. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

Underpass

Where 40.89 acres of ranch land were taken by the state highway commission as a right of way for an interstate highway, consisting of four lanes in width and fully controlled access, which split the remaining land into two divisions, leaving 432.69 acres, on which farm headquarters was located, on the north side of the highway and 393.42 acres on the south side of the highway, trial court in its preliminary order of condemnation properly ordered the commission to construct and maintain at its own expense an underpass leading from one side of the highway to the other. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 496.

93-9912. (9944) Appointment and meeting of commissioners. Immediately upon making and entering the preliminary condemnation order the judge must meet with the respective parties, or their attorneys of record, for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The court must thereupon appoint three (3) qualified, disinterested condemnation commissioners. One of such commissioners shall be nominated by the party or parties plaintiff; one of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two (2) commissioners previously nominated, provided, however, that if said two (2) commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge. Each commissioner shall possess the following qualifications: a citizen of the United States and over eighteen (18) years of age; that he is not more than seventy (70) years of age; that he is in possession of natural faculties, of ordinary intelligence and not decrepit; that he is possessed of sufficient knowledge of the English language; that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending; that he has not been

convicted of malfeasance in office, or any felony or other high crime; that he is not related within the sixth degree to any party; that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent, or partner or surety as to any party. At the time of such meeting and nominations there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows: that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants; and that he has no enmity against or bias in favor of any party and has not discussed, communicated or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded or to be awarded; that if selected as a condemnation commissioner he is willing to serve and will well and truly try the issues of compensation and a true decision render according to the evidence and in compliance with the instructions of the court; that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Immediately upon such nomination and appointment of commissioners the same shall proceed to meet at the time and place stated in the order appointing them, which time shall be not more than ten (10) days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said ten (10) day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land. Such hearing shall be attended by, and presided over by, the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence. At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings and the instructions of the court, the following:

1. to 4. * * * [Same as parent volume.]

5. Where there are two (2) or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award, for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein; thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R. C. M. 1921; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971. Cal. C. Civ. Proc. Sec. 1248.

Amendments

The 1971 amendment reduced the mini-

mum age specified in the fifth sentence of the first paragraph from 21 to 18 years, and made minor changes in style.

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence,

and did not reflect an increased valuation due solely to a distribution of interest. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604, distinguished in *State Highway Commission v. Barnes*, 151 M 300, 443 P 2d 16.

Expert Testimony as to Value

Testimony of expert witnesses showing that although presently used for agricultural purposes, highest and best use of land was for residential subdivision, showing comparative values of similar land in same geographical area, and showing how property could have been subdivided and how highway running through it detracted from its suitability for subdivision, was sufficient to sustain jury's verdict as against contention of state that expert witnesses based their opinions on mere speculation. *Montana State Highway Commission v. Jacobs*, 150 M 322, 435 P 2d 274, explained in 155 M 176, 183, 468 P 2d 749.

Lack of Certainty

In action for condemnation where none of the witnesses agreed as to the exact amount of acreage to be taken, and the engineers did not have all of the facts and figures so as to enable counsel to be exact, the cause was remanded for a new trial. *State Highway Commission v. Marsh*, — M —, 527 P 2d 573.

Lessee's Testimony

In condemnation action court properly permitted testimony of lessee for the purpose of showing how the operation of the ranch would be affected, but refused to allow testimony as to lessee's damage, since the fact of lessee's loss had not been offered in evidence and the lease provided that any condemnation award would go to the owner. *State Highway Commission v. Marsh*, — M —, 527 P 2d 573.

Measurement of Damages

Where jury in condemnation action awarded damages for land taken in excess of amount requested by landowner and testified to by expert appraisers, trial court properly granted a new trial notwithstanding fact that total award was equal to amount sought by landowner as total damages. *State Highway Commission v. Emery*, 156 M 507, 481 P 2d 686.

Once proper foundation has been laid as to the witness's expertise, he should be permitted to give his opinion using any of the accepted means of calculating value, such as market data, reproduction costs, or income capitalization. *State, Department of Highways v. Olsen*, — M —, 531 P 2d 1330.

Measure of Damages—Leasehold Interests

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604.

Noncontiguous Lands

Although the general rule in eminent domain proceedings requires that the land for which depreciation damages are sought be contiguous to that from which severance is made, the landowner may claim, as an exception to the general rule, that the unity of use within an integrated operation to which he applies noncontiguous lands is of such a character that after severance they cannot be fully utilized to their best and most valuable use; where highway right of way traversed a tract of ranch land so as to separate it into two parcels with no access for six and a half miles, court properly permitted testimony concerning damage to two other noncontiguous tracts used as a part of landowner's ranching operation. *State Highway Commission v. Renfro*, 161 M 251, 505 P 2d 403.

Severance Damages

While it is proper for the trial court to determine whether there has been an impairment of access, the question of the extent to which access has been impaired is for the jury, and it was not error for the court to refuse to give instructions to the effect that all means of access to the defendant's property had been destroyed. *State Highway Commission v. Manry*, 143 M 382, 390 P 2d 97.

To determine what is "remainder" of property taken under statute providing for damages for depreciation in value of portion of land not sought to be condemned, there are generally three tests: (1) unity of ownership, (2) contiguity, (3) unity of use; claimant who conveyed part of tract of subsequently condemned land to corporation was not entitled to compensation for depreciation in value to land he still held because claimant and corporation were two distinct owners and hence unity of ownership was absent even though claimant was majority shareholder of corporation and lands were contiguous. *Montana State Highway Commission v. Robertson & Blossom Inc.*, 151 M 205, 441 P 2d 181.

Valuation of Property

An owner of real property shall be qualified to estimate in a reasonable way the value of his property for the use to which he has been putting it. *State*

Highway Commission v. Marsh, — M —, 527 P 2d 573.

Verdict Form

It was not prejudicial error for the trial judge to give the jury a verdict form

which was in accord with this section and which verdict was not out of proportion to the damage done the defendant. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

93-9913. (9945) The date with respect to which compensation shall be assessed. For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw interest at the rate of ten per cent (10%) per annum from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) The date on which the right to appeal to the Montana supreme court expires, or if appeal is filed, to the date of final decision by the supreme court, or

(b) The date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b) of this section until the full amount is withdrawn from the court. None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation.

History: En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1967; amd. Sec. 12, Ch. 212, L. 1969; amd. Sec. 208, Ch. 316, L. 1974; amd. Sec. 1, Ch. 534, L. 1975. Cal. C. Civ. Proc. Sec. 1249.

Amendments

The 1965 amendment divided the section into paragraphs; substituted "full amount finally awarded" for "amount awarded" before "shall draw lawful interest" in the third sentence of the first paragraph; substituted "earlier of the following dates" and clauses (a) and (b) at the end of the first paragraph for "date of receipt of the award or any portion thereof"; and substituted the first two sentences of the final paragraph for "provided, however, that interest shall not be allowed or paid on so much thereof as shall have been paid to the landowner involved or withdrawn by such landowner from the court."

The 1967 amendment added to the first sentence of the initial paragraph, "and the

Compiler's Notes

The Federal Highway Beautification Act of 1965, referred to in the first paragraph of this section, is compiled in the United States Code as Tit. 23, secs. 131, 136 and 319.

reasonable cost of removal of all necessary personal property from the condemned real property within a reasonable distance in the area, not to exceed the sum of six thousand dollars (\$6,000) in the case of a business, farm or ranch relocation, and not to exceed the sum of four hundred dollars (\$400) in any other case"; inserted the second sentence; and, at the end of subparagraph (a), added "if appeal is filed to the date of final decision by the supreme court, or."

The 1969 amendment deleted the provision, inserted by the 1967 amendment, concerning removal of personality.

The 1974 amendment substituted "department of highways" for "state highway commission" in the second sentence of the first paragraph.

The 1975 amendment substituted "interest at the rate of ten per cent (10%) per annum for "lawful interest" in the third sentence of the first paragraph; and added "until the full amount is withdrawn from the court" at the end of the first sentence of the final paragraph.

Separability Clause

Section 2 of Ch. 182, Laws 1965 read "If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

Repealing Clauses

Section 3 of Ch. 182, Laws 1965 read "All acts, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act or part thereof, heretofore repealed."

Section 209 of Ch. 316, Laws 1974 read "Sections 32-101, 32-291, 32-315, 32-414, 32-417, 32-508, 32-527, 32-712, 32-716, 32-1001, 32-1117, 32-1118, 32-1120, 32-1121, 32-1122, 32-1123, 32-1127, 32-1129, 32-1401, 32-1619, 32-2403, 32-2405, 32-2417, 32-2418, 32-2501 through 32-2503, 32-2701 through 32-2716, 32-3501 through 32-3509, 32-3919, 32-3921, 32-3922, 32-4402, 53-703, 82A-702, 82A-703, and 82A-705 through 82A-708, R. C. M. 1947, are repealed."

Effective Date

Section 4 of Ch. 182, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

Appeal

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out

of proportion to the injury done as to be in excess of just compensation provided for by section 14, article III of the Montana constitution. State Highway Commission v. Woodcock, 147 M 291, 411 P 2d 357.

Assessment of Compensation

Where condemnee's house was between 50 and 60 years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. State Highway Commission v. Tubbs, 147 M 296, 411 P 2d 739.

Commercial Use

Where state highway commission in order to show public access to highway presented two appraisal witnesses to show that there was access at a certain exit in which case there would be no loss of commercial usefulness, it was quite proper and necessary to rebut this testimony and to let the jury know the type of easement provided for the access exit. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 498.

Cost of Moving Personal Property

Where friends of condemnees gratuitously aided them in moving personal property from condemned realty, condemnees were not entitled to recover the costs of their friends' labor as an element of damages. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

Depreciation on Inventory

This section requires the state to pay for any damage to personal property removed from condemned land including any depreciation in the inventory value of such property. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Improvements

In eminent domain proceeding trial court did not err in excluding evidence concerning improvement of sole access road to ranch property remaining after state highway commission had taken part of the property for right of way for interstate highway, where any changes in access were made after the date of service of the summons in the condemnation action. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 497.

Market Value

The proper value of a leasehold interest

is the fair market value not the market value less future rent to be paid. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604.

Where state not only took part of plaintiff's land, but also eliminated an old channel of water and diked up a new channel, thus creating a flood basin on plaintiff's land, evidence of actual results of taking was proper, even though land values are usually measured as of the date of summons. *State Highway Commission v. Biastoch Meats, Inc.*, 145 M 261, 400 P 2d 274.

When there is a market for the type of property being condemned, and the property has no other intrinsic value, courts

will adopt a market value in determining the actual value of the property, which is nothing more than the price resulting from fair negotiations between a willing seller and buyer. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

Where actual value as determined by jury is based on credible testimony as to market value of highest and best use for which land is available, the verdict and judgment will not be set aside. *State Highway Commission v. Vaughan*, 155 M 277, 470 P 2d 967.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751.

93-9915. (1947) Appeal from assessment of commissioners.

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence,

and did not reflect an increased valuation due solely to a distribution of title. *State Highway Commission v. City Service Co.*, 142 M 559, 385 P 2d 604, distinguished in *State Highway Commission v. Barnes*, 151 M 300, 443 P 2d 16.

93-9917. (1949) Payment of damages or deposit of bond therefor.

Delay in Payment of Damages

In eminent domain proceedings where the state highway commission did not move within thirty days as required by this section, it could not excuse its failure

to pay by alleging that it had no notice of the entry of judgment when the commission itself had caused the judgment to be entered. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

93-9918. (1950) Damages—to whom paid.

Delay in Payment of Damages

In eminent domain proceeding where the state highway commission did not move within thirty days as required by section 93-9917, it could not excuse its failure to pay by alleging that it had no notice of the entry of the judgment when the commission itself had caused the judgment to be entered. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

Stay of Execution

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under this section had issued, the appeal stayed the judgment although no bond was filed as required by section 93-8011 since under Rule 62(e), no security was required from the state. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

93-9920. (1952) Putting plaintiff in possession.

References

State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692 (concurring

opinion); *State Highway Commission v. Churchwell*, 146 M 52, 403 P 2d 751.

93-9921. (1953) Repealed.

Repeal

Section 93-9921 (Sec. 597, p. 195, L. 1877), relating to allowance and appor-

tionment of costs, was repealed by Sec. 2, Ch. 453, Laws 1973. For new law, see sec. 93-9921.1.

93-9921.1. Necessary expenses of litigation. The condemnor, shall within thirty (30) days after an appeal is perfected from the commissioner's award or report, submit to condemnnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnnee then accrued.

If at any time prior to ten (10) days before trial, the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer. In the event of litigation, and when the private property owner prevails, by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee.

History: En. 93-9921.1 by Sec. 1, Ch. 453, L. 1973.

"Section 93-9921, R. C. M. 1947, is repealed."

Title of Act

An act implementing article II, section 29 of the 1972 Montana constitution, by providing for an award including necessary expenses of litigation when the private property owner prevails; repealing section 93-9921, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 453, Laws 1973 read

Attorney and Witness Fees

Right to necessary costs of litigation arises only after private property owner secures a verdict higher than the state's final offer, and thus award of litigation costs was proper for case filed before enactment of this law, but decided after law was in effect. State, Department of Highways v. Olsen, — M —, 531 P 2d 1330.

93-9923. (9955) Private roads.

Implied Reserved Easement of Necessity

Where all witnesses agreed that there was no visible sign of a roadway or path over defendant's property at the time when plaintiff bought the adjoining property, there could have been no implied reserved easement for the roadway. Godfrey v. Pilon, — M —, 529 P 2d 1372.

Necessity of Easement

The necessity of an easement to landlocked parcel of real property must appear at the time of the conveyance of the property, and where grantor conveyed a tract of land to plaintiff but retained other land over which plaintiff could have made entry, there was no necessity for easement over land of a third party. Godfrey v. Pilon, — M —, 529 P 2d 1372.

93-9927. Relocation assistance—purpose of act. It is the purpose of this act to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of federally assisted programs, to establish uniform and equitable land acquisition policies for federally assisted programs and to comply with the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

History: En. Sec. 1, Ch. 3, 2nd Ex. L. 1971.

assistance to persons displaced as a result of acquisition of land for federally assisted programs and to provide for acquisition practices.

Title of Act

An act to provide for relocation as-

93-9928. Definition of terms in relocation assistance law. As used in this act, unless the context otherwise requires:

(1) "Agency" means the state of Montana, a political subdivision of the state or any department, agency or instrumentality of the state of Montana or of a political subdivision of the state.

(2) "Average annual net earnings" means one-half ($\frac{1}{2}$) of any net earnings of a business or farm operation, before federal and state income

taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during such other period as the acquiring agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

(3) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purposes of section 3 [93-9929] (1) of this act, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(4) "Displaced person" means any person who, on or after the effective date of this act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of an acquiring agency to vacate real property, for a program or project undertaken by the agency, for which federal financial assistance will be available to pay all or any part of the cost; and solely for the purposes of section 3 [93-9929] (1) and (2) and section 6 [93-9932] of this act, as a result of the acquisition of, or as the result of the written order of, the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project. The term "displaced person" also includes a person who moves or discontinues his business or moves other personal property, or moves from his dwelling as the direct result of code enforcement activities, or a program of rehabilitation of buildings conducted pursuant to a federal program.

(5) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970" or as that act may be amended.

(6) "Federal financial assistance" means a grant, loan, or contribution provided by the United States except any federal guarantee or insurance.

(7) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(8) "Person" means any individual, partnership, corporation or association.

History: En. Sec. 2, Ch. 3, 2nd Ex. L. 1971.

93-9929. Payments to displaced persons—moving expense allowance—business losses. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall make payment to the displaced person, upon application as approved by the agency, for:

(a) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(b) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency; and

(c) actual reasonable expenses in searching for a replacement business or farm.

(2) In lieu of payments for actual expenses and losses under subsection (1) of this section a person who is displaced from a dwelling may elect to receive a moving expense allowance determined according to a schedule established by the agency and a dislocation allowance, neither of which may exceed the maximum allowances under section 202 (b) of the federal act.

(3) In lieu of payments for actual expenses and losses under subsection (1) of this section a person who is displaced from his place of business or from his farm operation may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation provided that:

(a) the payment shall not be less nor more than the amounts set forth in section 202 (c) of the federal act;

(b) in the case of a business no payment shall be made under this subsection unless the acquiring agency is satisfied that the business cannot be relocated without a substantial loss of its existing patronage and is not a part of a commercial enterprise having at least one (1) other establishment not being acquired by an agency, which is engaged in the same or similar business.

History: En. Sec. 3, Ch. 3, 2nd Ex. L. 1971.

93-9930. Additional payments for displacement from dwelling owned by occupant. (1) In addition to payments otherwise authorized by this act, the acquiring agency shall make an additional payment to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty (180) days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) the amount may not exceed the amount allowed under section 203 of the federal act,

(b) the amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private

market. All determinations required to carry out this subsection (b) shall be made in accordance with regulations issued by the acquiring agency.

(c) the amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty (180) days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(d) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one (1) year period beginning on the date on which he received from the agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

History: En. Sec. 4, Ch. 3, 2nd Ex.
L. 1971.

93-9931. Additional payments for displacement from rented dwelling. In addition to amounts otherwise authorized by this act the acquiring agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4 [93-9930] of this act if the dwelling was actually and lawfully occupied by the displaced person for not less than ninety (90) days prior to the initiation of negotiations for acquisition of such dwelling. The payment shall be either:

(1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed four (4) years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed the amount allowable under section 204 of the federal act; or

(2) the amount necessary to enable such person to make a down payment (including reasonable expenses for evidence of title, recording fees, and other closing costs incident to the purchase of a dwelling, but not including prepaid expenses) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not

generally less desirable in regard to public utilities and public and commercial facilities. The amount payable under this subsection (2) shall not exceed the amount allowable under section 204 of the federal act and shall be subject to the same matching requirements as under said section.

History: En. Sec. 5, Ch. 3, 2nd Ex.
L. 1971.

93-9932. Relocation advisory services. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall provide a relocation assistance advisory program for displaced persons which offers the services described in this section. If the acquiring agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services.

(2) The relocation advisory service may include such budget, debt management and related counseling services as the acquiring agency determines will assist the displaced person. The relocation assistance program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) determine the need, if any, of displaced persons, for relocation assistance;

(b) provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(c) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(d) supply information concerning federal and state housing programs, disaster loan programs and other federal or state programs offering assistance to displaced persons; and

(e) provide other advisory services to displaced persons in order to minimize hardships to displaced persons in adjusting to relocation;

(f) secure the co-ordination of relocation activities with other project activities and other planned or proposed federal or state actions in the community or nearby areas which may affect the relocation program.

(3) In order to prevent unnecessary expenses and duplication of functions and to promote uniform and effective administration of relocation assistance programs, an agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this act through any federal or state agency having an established organization for conducting relocation assistance programs. Each agency whenever practicable, shall utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

History: En. Sec. 6, Ch. 3, 2nd Ex.
L. 1971.

93-9933. Assurance of availability of suitable replacement dwellings. Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the federal agency concerned with administering the federal financial assistance, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment.

History: En. Sec. 7, Ch. 3, 2nd Ex.
L. 1971.

93-9934. Relocation costs included in project costs—replacement housing. The acquiring agency shall include the cost of providing payments and assistance under the provisions of this act in the cost of any project for which federal financial assistance is available to pay all or any part of the cost. The acquiring agency shall also provide the payments and assistance and assure the availability of replacement housing for displaced persons, who are displaced as a result of real property being acquired by an agency and furnished as a required contribution incident to a federal program or project.

History: En. Sec. 8, Ch. 3, 2nd Ex.
L. 1971.

93-9935. Public assistance eligibility unimpaired—tax exemption of payments. No payment received by a displaced person under this act shall be considered as income or resources for the purpose of determining the eligibility of any person for assistance under any state law or for the purposes of determining income under state tax laws.

History: En. Sec. 9, Ch. 3, 2nd Ex.
L. 1971.

93-9936. Appeal to district court from administrative determination. Any person aggrieved by final administrative determination concerning eligibility for relocation payments authorized by this act may appeal such determination to the district court of the county in which the land acquired is located.

History: En. Sec. 10, Ch. 3, 2nd Ex.
L. 1971.

93-9937. Appraisal and negotiation policies—time allowed to move—condemnation proceedings. An agency which acquires real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of such program or project shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least ninety (90) days' written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary

for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

History: En. Sec. 11, Ch. 3, 2nd Ex.
L. 1971.

93-9938. Advancement of closing costs and taxes incurred by owner. Any agency acquiring real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses he necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency; penalty costs for prepayment for any pre-existing recorded mortgage or deed of trust entered into in good faith encumbering such real property; and the prorata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

History: En. Sec. 12, Ch. 3, 2nd Ex.
L. 1971.

93-9939. Reimbursement of costs when condemnation proceedings abandoned. Where a condemnation proceeding is instituted by an agency to acquire real property for a program or project for which federal financial assistance is available, and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings. The award of such sums will be paid by the agency which sought to condemn the property.

History: En. Sec. 13, Ch. 3, 2nd Ex.
L. 1971.

93-9940. Expenses included in inverse condemnation judgment or settlement. Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property for any program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or attorney for the acquiring agency effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the

court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

History: En. Sec. 14, Ch. 3, 2nd Ex.
L. 1971.

93-9941. Acquisition of buildings and improvements affected—payments to tenant. (1) Where any interest in real property is acquired for a program or project for which federal assistance will be available to pay all or any part of the cost of the program or project, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which are required to be removed from such real property or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

Payment for such buildings, structures, or improvements as set forth in this subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements. Nothing in this subsection (2) shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

History: En. Sec. 15, Ch. 3, 2nd Ex.
L. 1971.

93-9942. Duplication of eminent domain payments not intended. No payment or assistance provided for in this act shall be required to be made by an agency if the displaced person receives a payment required by the laws of eminent domain which is determined by the agency to have substantially the same purpose and effect as such payment under this act.

History: En. Sec. 16, Ch. 3, 2nd Ex.
L. 1971.

93-9943. New rights and powers not created. (1) The provisions of section 7 [93-9933] of this act create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

(2) Nothing in this act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or damage not in existence immediately prior to the effective date of this act.

(3) Nothing in this act shall be construed as, directly or indirectly, granting any new or additional power of eminent domain.

History: En. Sec. 17, Ch. 3, 2nd Ex.
L. 1971.

93-9944. Application to all federally assisted programs. This act shall apply to all acquisitions of real property by an agency for a program or project for which federal financial assistance is available to pay all or any part of the cost.

History: En. Sec. 18, Ch. 3, 2nd Ex.
L. 1971.

CHAPTER 100—NAMES—CHANGE OF NAMES OF PERSONS —OF WATERCOURSES

Section 93-100-2. Application for change of name—how made.

93-100-2. (9964) Application for change of name—how made. All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under eighteen (18) years of age, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name; and must, if neither parent of such person be living, name as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of, any benevolent or charitable order or society, may, by petition, apply to the district court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be made as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association.

History: En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R. C. M. 1921; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975.

Amendments

The 1971 amendment changed the age specified in the first sentence from 21 for males and 18 for females to 19 for either.

The 1973 amendment reduced the age specified in the first sentence from nineteen to eighteen years.

The 1975 amendment substituted "if neither parent * * * be living" in the second sentence for "if the father * * * be not

living"; and made minor changes in phraseology and punctuation.

CHAPTER 101—BIRTH DATE—PROCEDURE FOR JUDICIAL DETERMINATION

93-101-4. Fees—certification of judgment.

Compiler's Notes

Section 105, Ch. 349, Laws 1974, substituted "department of health and en-

vironmental sciences" in this section for "bureau of vital statistics, state board of health."

CHAPTER 301—EVIDENCE—DEFINITIONS—KINDS AND DEGREES OF

93-301-4. (10491) The degree of proof required to establish facts.

Criminal Cases

Evidence that included victim's testimony corroborated by medical evidence was sufficient to support jury conviction of statutory rape. *State v. Anderson*, 156 M 122, 476 P 2d 780.

Insufficient Evidence

Where lessee alleged breach of covenant of quiet enjoyment on grounds that he had been substantially deprived of his prorata share of parking spaces in shopping center lot, his evidence in support of allegations was insufficient under this section and section 93-301-13 since it consisted only of testimony that on one occasion parking lot was full but only three tables were occupied in lessee's restau-

rant. *Joseph v. Hustad Corp.*, 153 M 121, 454 P 2d 916.

Where owner of mineral rights to property built road for access to his oil well on property owned by plaintiff and such road was alleged to have been causing plaintiff's dam and spillway to erode, jury verdict of damages for such injury was reversed, since dam and spillway had not in fact washed out and evidence did not indicate conclusively that washout was inevitable; therefore plaintiff's evidence did not preponderate in favor of findings on which it was based as provided by this section and section 93-301-13. *Hurley v. Northern Pacific R. Co.*, 153 M 199, 455 P 2d 321.

93-301-7. (10494) Primary evidence defined.

Untimely Motion for Best Evidence

Although based on valid grounds of best evidence rule, defendant's motion to strike the testimony of the state fire marshal regarding the results of gas chromatogram test, without entry of chromato-

gram itself or any standards of interpretation, was not timely when made during cross-examination of another witness later in the trial, and was properly overruled. *State v. Burtchett*, — M —, 530 P 2d 471.

93-301-11. (10498) Prima-facie evidence defined.

Ownership of Cattle

Although under sections 46-606 and 67-308 prima facie the owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under this section. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants

to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

Statutory Rape

Prima facie case of statutory rape was established by testimony of rape victim on cross- and redirect examination that defendant had committed an act of sexual intercourse with her. *State v. Anderson*, 156 M 122, 476 P 2d 780.

93-301-13. (10500) Satisfactory evidence defined.**Insufficient Evidence**

Where lessee alleged breach of covenant of quiet enjoyment on grounds that he had been substantially deprived of his prorata share of parking spaces in shopping center lot, his evidence in support of allegations was insufficient under this section and section 93-301-4 since it consisted only of testimony that on one occasion parking lot was full but only three tables were occupied in lessee's restaurant. *Joseph v. Hustad Corp.*, 153 M 121, 454 P 2d 916.

Where owner of mineral rights to prop-

erty built road for access to his oil well on property owned by plaintiff and such road was alleged to have been causing plaintiff's dam and spillway to erode, jury verdict of damages for such injury was reversed since dam and spillway had not in fact washed out and evidence did not indicate conclusively that washout was inevitable; therefore plaintiff's evidence did not preponderate in favor of findings on which it was based as provided by this section and section 93-301-4. *Hurley v. Northern Pacific R. Co.*, 153 M 199, 455 P 2d 321.

CHAPTER 401—EVIDENCE—GENERAL PRINCIPLES OF**93-401-4. (10508) Witness presumed to speak the truth.****Accomplice as Witness**

In a first degree burglary case the credibility of the defendant's accomplice, a convicted felon, was for the jury. *State v. Barick*, 143 M 273, 389 P 2d 170.

Credibility of Witnesses

Testimony that a truck had earlier been

observed traveling at 65 to 70 miles per hour was admissible to impeach the credibility of driver's employer, who had testified that the truck could not attain speeds higher than 35 to 38 miles per hour. *Seder v. Peter Kiewit Sons' Co.*, 156 M 322, 479 P 2d 448.

93-401-7. (10511) Declarations which are a part of the transaction.**Res Gestae**

Statements made by decedent to her neighbors to the effect that her husband had beaten her the previous evening and that morning and that she was anxious to leave the house were not part of the res gestae and not admissible in prosecution against husband for voluntary manslaughter where statements were made twelve to thirteen hours after the alleged beating and decedent died nearly 24 hours later in a hospital as a result of a subarachnoid clot caused by external

trauma. *State v. Newman*, — M —, 513 P 2d 258.

Time between Transaction and Declaration

In a negligence action by passenger of car struck by truck, testimony of truck driver concerning declarations of driver of automobile concerning speed at which he was traveling was admissible even though made some ten minutes after collision. *Blevins v. Weaver Constr. Co.*, 150 M 158, 432 P 2d 378.

93-401-9. (10513) Declaration of decedent evidence of pedigree.**References**

Cited in *Bender v. Bender*, 144 M 470, 397 P 2d 957.

93-401-11. (10515) When part of the transaction proved, etc.**References**

State Highway Commission v. Churchill, 146 M 52, 403 P 2d 751.

93-401-12. (10516) Contents of writing—how proved.**Duplicate Original**

Carbon copy made at same time as original and with all formalities of the first sheet was a "duplicate original" and thereby properly admitted as original retail installment contract without explana-

tion of failure to produce the ribbon copy. *Morris v. Langhausen*, 155 M 362, 472 P 2d 860.

Laboratory Test Results

In an action for damages for death of

dairy cows and losses occasioned by poisoning, allowing cattle owner to testify concerning laboratory test results was not prejudicial where the testimony was

brought out properly later without objection. *Hopkins v. Ravalli County Electric Cooperative, Inc.*, 144 M 161, 395 P 2d 106, 109, 12 ALR 3d 1096.

93-401-13. (10517) An agreement reduced to writing deemed the whole.

Clear Language

Parol testimony was not admissible to extend the term of a permissive easement beyond the expiration date set in a written agreement that clearly contained no mistake, imperfection or ambiguity. *Larson v. Burnett*, 158 M 421, 492 P 2d 921.

No ambiguity existed between clause conveying one-half of the minerals in 1,040 acres and the conveyance of 520 mineral acres, so that mineral deed could not be varied by parol evidence. *Superior Oil Co. v. Vanderhoof*, 297 F Supp 1086.

Completeness of Writing

Statements made by various agency personnel in regard to continued use of

defendant's office building were not admissible under parol evidence rule to alter or contradict terms of express written contract since such statements and assurances did not come within any recognized exception to rule and since defendant admitted that he knew written contract would be controlling. *United States v. Willard E. Fraser Co.*, 308 F Supp 557, affirmed 459 F 2d 483.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751; *Thisted v. Country Club Tower Corp.*, 146 M 87, 405 P 2d 432.

93-401-15. (10519) Construction of statutes and instruments, etc.

Insurance Policy

Clause in disability insurance policy which provided that benefits were payable only in cases involving continuous and total disability within 30 days of date of accident preventing performance of every duty pertaining to insured's occupation, precluded recovery under policy by insured who returned to work temporarily within 30-day period and was able to do a portion of his duties since,

where language admits of only one meaning, there is no room for interpretation under the guise of ambiguity. *Nelson v. Combined Ins. Co. of America*, 155 M 105, 467 P 2d 707.

References

In re Jones' Estate, 146 M 439, 408 P 2d 482; *Wolff v. Standard Life & Accident Ins. Co.*, 147 M 460, 416 P 2d 11, 17.

93-401-17. (10521) The circumstances to be considered.

Building Lease

Statements made by various agency personnel in regard to continued use of defendant's office building were not admissible under parol evidence rule to alter or contradict terms of express written contract since such statements and assurances did not come within any recognized exception to rule and since defendant admitted that he knew written contract would be controlling. *United States v. Willard E. Fraser Co.*, 308 F Supp 557, affirmed 459 F 2d 483.

Intention of Parties

Informal written instrument stating "I wish to pay" and uncontradicted evidence that donor rejected lawyers and wanted

to give a gift established donative intent. *Faith Lutheran Retirement Home v. Veis*, 156 M 38, 473 P 2d 503.

Mineral Deed

No ambiguity existed between clause conveying one-half of the minerals in 1,040 acres and the conveyance of 520 mineral acres, so that mineral deed could not be varied by parol evidence. *Superior Oil Co. v. Vanderhoof*, 297 F Supp 1086.

References

Close v. Rueggsegger's Estate, 143 M 32, 386 P 2d 739; *Thisted v. County Club Tower Corp.*, 146 M 87, 405 P 2d 432; *Ryan v. Ald, Inc.*, 146 M 299, 406 P 2d 373.

93-401-26. (10530) Affirmative only can be proved.

Notice

Where plaintiff alleged giving of notice which defendant denied, notice or lack thereof was put in issue and plaintiff had

burden of proof. *Glacier General Assurance Co. v. State Farm Mutual Automobile Ins. Co.*, 150 M 452, 436 P 2d 533.

Partial Payment

Partial payment by special deposit was an affirmative defense which debtor had burden of proving in suit on note; that burden of proof required that it be shown that payment was made on the particular

obligation in controversy. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

References

Colarchik v. Watkins, 144 M 17, 393 P 2d 786.

93-401-27. (10531) Facts which may be proved on trial.

Admission by Living Person

In an action by property owner against church camp for damage from fire begun by camp counselor, letter written by counselor admitting starting fire accidentally was inadmissible as declaration against interest since counselor, although unavailable to testify, was not dead within requirement of subdivision 4. *MacDonald v. Protestant Episcopal Church*, 150 M 332, 435 P 2d 369.

Admissions against Interest—Pleadings

Pre-trial order which limited issues to be litigated did not supersede plaintiff's original complaint to sustain trial court's ruling that defendant could not use complaint to cross-examine plaintiff concerning certain inconsistencies between plaintiff's original complaint and his testimony; although this refusal by trial court was error, it was not ground for reversal since error was "harmless." *Fox v. Fifth West, Inc.*, 153 M 95, 454 P 2d 612.

Boundary Lines

In boundary dispute, where the monuments to the boundary of a thoroughfare were obliterated, the boundaries were properly proven by tradition, customary usage and the way in which buildings along the thoroughfare had been built. *Brady v. State Highway Commission*, — M —, 517 P 2d 738.

Expert Testimony

Ex-highway patrolman, who had twenty years' experience investigating automobile accidents, including determinations of speed from skidmarks and surrounding circumstances, and was skilled in use of graphs and charts used by National Safety Council and Montana Highway Patrol in connection with determining speed from skidmarks, was qualified to give expert opinion evidence as to speed of defendant's automobile, even though he had retired from highway patrol some six years previously, had first heard of accident two weeks before trial, did not measure drag factor or coefficient of friction on particular road surface involved and, as mere highway patrolman, would not have been

permitted to testify to investigation made year and one-half after accident. *Graham v. Rolandson*, 150 M 270, 435 P 2d 263.

Hypothetical Question

Hypothetical question directed to fire-arms expert, as to the amount of smoke and powder residue he would expect to find on the victim's sleeve, which did not assume any facts not in evidence, was properly admissible, since the purpose of the hypothetical question directed to an expert witness is to enable the jury to understand the facts and their consequences. *State v. Thompson*, — M —, 524 P 2d 1115.

Qualification by Practical Experience

Trial court did not err by permitting fire marshal to testify as expert witness on possible or probable cause of fire where fire marshal had served seventeen years as a fireman, had attended six seminars on fire and arson investigation, had completed another 100-hour fire and arson investigation course, had assisted in planning a state arson school, all of which studies encompassed the subjects of fire investigation, arson, explosions, evidence, interviewing witnesses, photography, collection and preservation of evidence and determination of origin of fires. *Haynes v. County of Missoula*, — M —, 517 P 2d 370.

Res Gestae

Statements made by decedent to her neighbors to the effect that her husband had beaten her the previous evening and that morning and that she was anxious to leave the house were not admissible under the "dying declarations" exception in prosecution against husband for voluntary manslaughter where decedent died nearly 24 hours later in a hospital as a result of a subarachnoid clot caused by external trauma. *State v. Newman*, — M —, 513 P 2d 258.

References

Cited in *Bender v. Bender*, 144 M 470, 397 P 2d 957; *McReynolds v. McReynolds*, 147 M 476, 414 P 2d 531.

CHAPTER 501—EVIDENCE—JUDICIAL NOTICE OF FACTS AND FOREIGN LAWS

93-501-1. (10532) Certain facts of general notoriety assumed to be, etc.

Actual Knowledge

The burden of proof is on the individual litigant, and the courts are not required by the doctrine of judicial notice to inform themselves of facts not within the actual knowledge of the court, nor need the courts take judicial notice of a fact or facts when the party desiring such notice does not request it. *Holtz v. Babcock*, 143 M 341, 389 P 2d 869, 390 P 2d 801.

Judicial Acts and Records

Probate judge, in determining distribution of estate, has power to determine circumstances of decedent's death and in

doing so properly took notice under subdivision 2 of this section of wife's conviction of manslaughter in death of her husband. *Sikora v. Sikora*, 160 M 27, 499 P 2d 808.

Succession to Office

The court took notice that upon his death the governor was succeeded as provided by law. *Holtz v. Babcock*, 143 M 341, 389 P 2d 869, 390 P 2d 801.

References

Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 749; *State v. Peters*, 146 M 188, 405 P 2d 642.

CHAPTER 701—EVIDENCE—WITNESSES

Section 93-701-4. Persons in certain relations cannot be examined.

93-701-1. (10533) Witness defined.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-2. (10534) All persons capable of perceptions, etc.

Felony Conviction

An accomplice may testify in a criminal case even though he is a convicted felon

at the time of his testimony. *State v. Barick*, 143 M 273, 389 P 2d 170.

93-701-3. (10535) Persons who cannot be witnesses.

Deceased Agent—Injustice Prevented

Before a witness who is barred by subdivision 4 will be allowed to testify to prevent an injustice, a foundation must be laid by the introduction of other evidence which shows that in all probability the proponent had a meritorious cause of action. *Johnson v. Mommoth Lode & Uranium Exploration Corp.*, 136 M 420, 348 P 2d 267.

Decedents' Estates—Injustice Prevented

District court did not abuse its discretion in allowing a witness otherwise barred under subdivision 3 to testify as to agreement with partner for mutual wills as against intestate heirs of deceased partner, upon showing that the witness and the deceased held saving accounts, corporate stock, and residence in joint tenancy with right of survivorship, that the witness and the deceased had had a lifelong association and successful partnership under both oral agreement and written articles of copartner-

ship, that the witness had willed his entire estate to the deceased, and the witness and the deceased had intended for the proceeds of the sale of the partnership to be in joint tenancy with right of survivorship and that this was evidenced by an escrow receipt instructing payment of proceeds to a jointly held bank account. *Hansen v. Kiernan*, 159 M 448, 499 P 2d 787.

Decedent's Estates—Written Communications

Trial court's finding based upon oral testimony concerning terms of contract executed by deceased was error since such oral testimony, varying terms of written contract, was inadmissible under this section. *Davison v. Casebolt*, 154 M 125, 461 P 2d 2.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-4. (10536) **Persons in certain relations cannot be examined.** There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1 to 6. * * * [Same as parent volume.]

7. A counselor, psychologist, nurse, or teacher, employed by any educational institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution, provided however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

8. A publisher, editor, reporter or other person connected with or employed upon a newspaper, or by a press association or wire service, or any person who has been so connected or employed, cannot without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be adjudged in contempt by a court, the legislature or any administrative body for refusing to disclose the source of any information procured while so connected or employed for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television.

9. A speech pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him.

History: Ap. p. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975.

Amendments

- The 1971 amendment added subdivision 7.
- The 1973 amendment added subdivision 8.
- The 1975 amendment added subdivision 9.

Attorney and Client

Opinions of house counsel rendered to an employer were entitled to the attorney-client privilege, and where portions of them had been disclosed in camera, the client was entitled to a protective order preventing their further disclosure or use

in pleadings by the opponent. State ex rel. Union Oil Co. of California v. District Court, 160 M 229, 503 P 2d 1008.

Husband and Wife

Section 95-3011, rather than subdivision (1) of this section, was applicable in determining existence of marital privilege in homicide prosecution, State v. Taylor, — M —, 515 P 2d 695.

Physician and Patient

The physician-patient privilege under subsection 4 of this section is not available to a defendant in a criminal action since the provision in section 94-7209 (now 95-3001) incorporating the civil rules of evidence into the criminal law "except as otherwise provided" pertains to the language of subsection 4 which specifically limits the privilege to civil actions. State v. Campbell, 146 M 251, 405 P 2d 978, 22 ALR 3d 824.

References

State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 801—EVIDENCE—UNIFORM BUSINESS RECORDS AS
EVIDENCE ACT—UNIFORM PHOTOGRAPHIC COPIES OF
BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

Section 93-801-5. Reproductions of originals.

93-801-1. "Business" defined.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Business Records as Evidence Act: Connecticut, Michigan, and Rhode Island.

93-801-2. Proof of business records.

Accuracy of Records

In first degree murder trial, transcript of tape-recorded statement by defendant was not admissible as business record where no one testified as to the accuracy of the transcription and tapes were either lost or destroyed sometime between the time of the taking of the statement and the time of the trial. *State v. Warwick*, 158 M 531, 494 P 2d 627.

Foundation for Admissibility

An altered and edited copy of an inspection report, prepared for the possibility of litigation, does not qualify for admission as a business record. *Pessl v. Bridger Bowl*, — M —, 524 P 2d 1101.

Medical Records

Medical testimony based on information acquired from outside sources, including examinations by other doctors,

nurse's notes and observation, X-rays, and other tools of the profession used in making a diagnosis is admissible if part of the case file. *Klaus v. Hillberry*, 157 M 277, 485 P 2d 54.

Suicide Note

Suicide note written by stockbroker of decedent which stated that the stockbroker had, over a course of years, misappropriated large amounts of stock certificates entrusted to him, was admissible to show that securities had been stolen prior to decedent's death and that such securities were not an "asset" for which the executor could be held responsible in an action instituted by beneficiary of decedent's estate alleging that executor had negligently failed to collect assets of decedent. *In re Estate of Schueren*, — M —, 512 P 2d 1283.

93-801-5. Reproductions of originals. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding, whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence, if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

History: En. Sec. 1, Ch. 100, L. 1953; amd. Sec. 1, Ch. 160, L. 1969.

Amendments

The 1969 amendment deleted a limita-

tion in the first sentence that original may be destroyed unless "held in a custodial or fiduciary capacity."

NOTE.—Uniform State Law. In addition to the states listed in the note in

the parent volume the following also have adopted the Uniform Photographic Copies of Business and Public Records as

Evidence Act: Arkansas, Delaware, Michigan, and West Virginia.

CHAPTER 901—EVIDENCE—UNIFORM OFFICIAL REPORTS AS EVIDENCE ACT

93-901-1. Official reports admissible as evidence.

NOTE.—Uniform State Law. Sections 93-901-1 through 93-901-5 constitute the "Uniform Official Reports as Evidence Act" approved by the National Conference of Commissioners on Uniform State Laws in 1936 and adopted in various forms in Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Caro-

lina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, and also in the Virgin Islands.

Accident Report Inadmissible

Undated, unsworn accident investigation report of the forest service was hearsay and inadmissible since the preparer of the report who actually investigated the condition of the ski lift was not a witness at trial. *Pessl v. Bridger Bowl*, — M —, 524 P 2d 1101.

CHAPTER 1001—EVIDENCE—PUBLIC WRITINGS

93-1001-9. (10547) Constitution and statutes.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

93-1001-19. (10557) Copy of a foreign record—when evidence.

References

In re Hosova's Estate, 143 M 75, 387 P 2d 305.

93-1001-23. (10561) What deemed adjudged in a judgment.

Collateral Estoppel

Buyers of land under contract for deed were not estopped from bringing an action to establish beneficial ownership of water rights and water stock under the contract for deed by virtue of having brought a prior action for specific performance of the contract where the district court, in the first case, refused

to adjudicate the water rights as an issue which was beyond the scope of the controversy presented to it; failure to take an appeal from the trial court's denial to decide the controversy in the prior case did not effect a judicial determination of the controversy. *Schwend v. Jones*, — M —, 515 P 2d 89.

93-1001-30. (10568) Manner of proving other official documents.

References

Holtz v. Babcock, 143 M 341, 390 P 2d 801.

CHAPTER 1101—EVIDENCE—PRIVATE WRITINGS

93-1101-9. (10585) Original writing to be proved or accounted for.

Duplicate Original

Carbon copy made at same time as original and with all formalities of the first sheet was a "duplicate original" and thereby properly admitted as original re-

tail installment contract without explanation of failure to produce the ribbon copy. *Morris v. Langhausen*, 155 M 362, 472 P 2d 860.

93-1101-17. (10594) Entries of decedents evidence in specified cases.**Suicide Note**

Suicide note written by stockbroker of decedent which stated that the stockbroker had, over a course of years, misappropriated large amounts of stock certificates entrusted to him, was admissible to show that securities had been stolen prior to decedent's death and that

such securities were not an "asset" for which the executor could be held responsible in an action instituted by beneficiary of decedent's estate alleging that executor had negligently failed to collect assets of decedent. In re Estate of Schueren, — M —, 512 P 2d 1283.

CHAPTER 1201—EVIDENCE—MATERIAL OBJECTS OTHER THAN WRITINGS**93-1201-1. (10599) Material objects.****Tampering with Evidence**

Admission in evidence of plastic bag containing marijuana was within the discretion of the trial court, in a prosecution for sale of dangerous drugs, on the

testimony of a witness connecting the bag with defendant, and defendant had burden of proof that bag had been tampered with. State v. Thomas, — M —, 532 P 2d 405.

CHAPTER 1301—EVIDENCE—INDIRECT—INFERENCES AND PRESUMPTIONS**93-1301-1. (10600) Indirect evidence classified.****Presumption Regarding Sentencing**

Presumption that first offender under Dangerous Drug Act is entitled to de-

layed imposition of sentence is kind of indirect evidence under this section. State v. Simtob, 154 M 286, 462 P 2d 873.

93-1301-2. (10601) Inference defined.**Inference Distinguished from Suspicion**

An inference is to be distinguished from mere suspicion which is "the act or an instance of suspecting: imagination or apprehension of something wrong or hurt-

ful without proof or on slight evidence" (quoting Webster's New International Dictionary, 3rd ed. 1961). State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-3. (10602) Presumption defined.**Presumption Regarding Sentencing**

Presumption regarding sentencing under Dangerous Drug Act "is a deduction which the law expressly directs to be made from particular facts." State v. Simtob, 154 M 286, 462 P 2d 873.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-4. (10603) When an inference arises.**References**

State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-5. (10604) Presumptions may be converted, when.**Adverse Possession**

Although this section provides that presumptions may be overcome by other evidence, presumption of adverse possession was not overcome by evidence showing

acquiescence since acquiescence did not amount to permissive use or license. O'Connor v. Brodie, 153 M 129, 454 P 2d 920.

93-1301-6. (10605) Specification of conclusive presumptions.**Acts Constituting Estoppel**

Director of closely held corporation who was obligated to sell his shares back to the corporation pursuant to repurchase agreement was estopped to deny his acquiescence to the terms of the sale by virtue of his response to telephone calls indicating his willingness to sell the shares and requesting the proceeds to be paid to his creditors with the remaining balance to himself, by virtue of the corporate officer's testimony that the director knew of the board of directors' resolution to exercise their option to purchase his stock at fifty per cent of its book value, by virtue of the director's conduct which led the corporation to believe the consent to purchase would be signed and by virtue of the director's failure to object to the proceedings of the corporation in enacting the resolution calling for the repurchase of his stock, which actions resulted in the failure of the corporation to call a meeting of the board of directors within the period during which the corporation's right to repurchase the stock could have been properly exercised. *State ex rel. Howeth v. D. A. Davidson & Co.*, — M —, 517 P 2d 722.

Deed from Mother to Son

Conclusive presumption was not established in situation where court refused to impose constructive trust upon lands deeded to son by aged mother. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

Estoppel by Own Acts

Lessors of mineral rights were not estopped from denying validity of lease by lessee's contention that lessors led him to believe that previous lease had expired by showing him a "notice" of breach sent to previous lessee where lessee actually relied upon county records and was aware of the prior lease of record covering the same land. *Christian v. A. A. Oil Corp.*, 161 M 420, 506 P 2d 1369.

The doctrine of equitable estoppel set forth in subdivision 3 of this section is not available as a defense when the essential elements of estoppel are lacking. *Belhumeur v. Dawson*, 229 F Supp 78, 86.

Legitimacy

Child is presumed legitimate if mother and father were married. *Spradlin v. United States*, 262 F Supp 502.

93-1301-7. (10606) All other presumptions may be controverted.**Controversion of Presumption**

Presumption that first offender under Dangerous Drug Act is entitled to delayed imposition of sentence is disputable and may be controverted by other evidence but controls unless so contradicted. *State v. Simtob*, 154 M 286, 462 P 2d 873.

Subdivision 4

Deceased was presumed to have taken ordinary care of his own concerns, however plaintiff's evidence in wrongful death action showing deceased's failure to properly test empty gasoline tank before welding it which could very well have been cause of accident contradicted presumption. *Knowlton v. Sandaker*, 150 M 438, 436 P 2d 98.

Damages were properly denied where the uncontroverted evidence showed that the plaintiff, while working near overhead power lines, had failed to exercise ordinary care for his own safety, which failure proximately caused his injuries. *Sprankle v. DeCock*, — M —, 530 P 2d 457.

Subdivision 15

Statutory presumption that "official duty has been regularly performed" was not overcome where defendant offered no evidence to show that any prospective juror

was improperly excused from service and where judge testified that no prospective juror was excused from service without valid statutory excuse. *State v. Corliss*, 150 M 40, 430 P 2d 632.

On basis of statutory presumption and on basis of testimony of county employee that he had been ordered to maintain road by county commissioner who was also owner of the land, court concluded that then owner of land regarded road as public highway, in determining that public highway had been established by prescriptive use. *Kostbade v. Metier*, 150 M 139, 432 P 2d 382.

Findings and conclusions of district court are presumed correct and will not be reversed on appeal unless evidence, even though conflicting, preponderates against them. *Breen v. Industrial Accident Board*, 150 M 463, 436 P 2d 701.

Statutory presumption in subdivision 15 imposed a heavy burden upon party attacking bank superintendent's order permitting establishment of another bank in a community, and where superintendent made a thorough investigation, secured opposing views, and considered all evidence, including some confidential evidence as to economic prospects within the community, the evidence that he acted within his discretionary powers was

so great as to support a summary judgment denying injunction or prohibition against the superintendent's action. *Miners & Merchants Bank v. Dowdall*, 158 M 142, 489 P 2d 1274.

Statutory presumption of correctness of secretary of state's certification as to total number of electors voting at election on new constitution was overcome by demonstrable fact, apparent from other figures in his certificate, that not that many electors cast valid votes on either side of the question. *State ex rel. Cashmore v. Anderson*, 160 M 175, 500 P 2d 921, certiorari denied in 410 US 931.

Cashmore v. Anderson, — M —, 500 P 2d 921, certiorari denied 410 US 931.

Where petitioner claimed, fourteen years after his conviction, that his confession had been coerced and records of the proceedings against him were incomplete, but he had counsel to represent him on a second charge brought against him a few days later, presumption that petitioner had voluntarily waived right to counsel on the first charge, besides the fact that he had pleaded guilty to it so that confession was not used against him, reinforced presumption that the proceedings had not violated his constitutional rights. *Frost v. State of Montana*, 249 F Supp 349.

Subdivision 17

Absent proof that evidence at hearing on entry of default judgment was insufficient or that an erroneous standard of damages was used, presumption that judgment was correct controlled on appeal, and aggrieved party could not attack evidence on which default judgment was based by introducing evidence in support of his proposed defense at hearing on his motion to vacate default judgment. *Uffleman v. Labbit*, 152 M 238, 448 P 2d 690.

Where petitioner claimed, fourteen years after his conviction, that his confession had been coerced and records of the proceedings against him were incomplete, fact that defendant had pleaded guilty to the crime charged so that confession was not used, and record stated he had waived right to counsel reinforced presumption under this subdivision that defendant's constitutional rights to counsel and against self-incrimination had not been violated. *Frost v. State of Montana*, 249 F Supp 349.

Subdivision 18

Presumption was not overcome where jury found in favor of defendant on his counterclaim filed in response to plaintiff's action for negligence from which may be inferred fact that issue of defendant's negligence was before the jury and that in not finding for plaintiff jury con-

cluded that defendant was not negligent. *Ratcliff v. Murphy*, 150 M 31, 430 P 2d 627.

Subdivision 24

Presumption under this section that condemnnee had received revised contract from state was strengthened by facts that condemnnee received other documents enclosed in the same envelope, the envelope was not returned to the state office and the condemnnee was well-known in the vicinity. *Crissey v. State Highway Commission*, 147 M 374, 413 P 2d 308.

Testimony that notice was signed, placed in properly addressed envelope with sufficient postage thereon and mailed by certified mail was sufficient foundation for district court to admit original document into evidence and make finding that required notice was given. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

Fact that letter addressed to county department of public welfare was mailed does not establish when it was received or that it was received by a responsible official. *Application of Hendrickson*, 159 M 217, 496 P 2d 1115.

Subdivision 30

Evidence that man and woman exchanged wedding rings, mutually declared their marriage, and thereafter openly lived together, supported finding that they were married. *Estate of Swanson*, 160 M 271, 502 P 2d 33, distinguished in 509 P 2d 293, 295.

In view of statute recognizing common-law marriage, presumption that man and woman deporting themselves as husband and wife have entered into lawful contract of marriage is itself proof of marriage and is overcome as matter of law only when in light of proved facts reasonable men could no longer find in accordance with presumed fact. *Spradlin v. United States*, 262 F Supp 502.

Presumption of valid common-law marriage may be overcome if divorce records from the residences of alleged common-law husband reveal that he was not divorced from former wife or had not had former marriage annulled. *Spradlin v. United States*, 284 F Supp 763.

Subdivision 33

Findings and conclusions of district court are presumed correct and will not be reversed on appeal unless the evidence, even though conflicting, preponderates against them. *Breen v. Industrial Accident Board*, 150 M 463, 436 P 2d 701.

References

Subdivision 15: *Tooker v. State*, 147 M 207, 410 P 2d 923; *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

Subdivision 16: *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

Subdivision 17: *Tooker v. State*, 147 M 207, 410 P 2d 923; *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

CHAPTER 1401—EVIDENCE—INDISPENSABLE—UNWRITTEN AGREEMENTS—CONCLUSIVE—UNANSWERABLE

Section 93-1401-3. Will to be in writing.

93-1401-3. (10609) Will to be in writing. A last will and testament is invalid unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

History: En. Sec. 3272, C. Civ. Proc. 1895; re-en. Sec. 7965, Rev. C. 1907; re-en. Sec. 10609, R. C. M. 1921; amd. Sec. 14, Ch. 263, L. 1975. Cal. C. Civ. Proc. Sec. 1969.

Amendments

The 1975 amendment deleted "except a nuncupative will" after "testament"; and made minor changes in punctuation.

Repealing Clause

Section 15 of Ch. 263, Laws 1975 read

"Sections 33-129, 84-4110, 91-103, 91-104, 91-109, 91-117 through 91-121, 91-123, 91-131, 91-132, 91-134, 91-202, 91-225, 91-302, 91-305, 91-306, 91-310, 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through 91-627, 91-812, 91-1201, 91-1202, 91-1205 through 91-1207, 91-1304, 91-2205, 91-2714, 91-2722, 91-3206, 91-3208, 91-3401, 91-3501 through 91-3519, 91-3609 through 91-3611, 91-4519, 91-4520, 91-4526, 91-4605, 91-4609, 91-4905, 91-5008 through 91-5016, 91-5201, 91-5204, 91-5205, 91-5211, 93-1401-4, and 93-6352 through 93-6354 are repealed."

93-1401-4. (10610) Repealed.

Repeal

Section 93-1401-4 (Sec. 3273, C. Civ. Proc. 1895), relating to revocation of a

will, was repealed by Sec. 15, Ch. 263, Laws 1975.

93-1401-7. (10613) Agreement not in writing—when invalid.

Estoppel from Raising Statute

Promisor was estopped from raising statute of frauds as defense to action on oral agreement on basis of evidence of glaring inconsistencies in promisor's position. *Daley v. Daley*, 150 M 432, 436 P 2d 88.

subsequent actions of the seller in holding the property off the market, were sufficient to establish a valid option agreement, as well as to show that the agreement had been fully performed. *Lynch v. Shields*, — M —, 529 P 2d 348.

Note or Memorandum

While the statute of frauds does not require that the memorandum be contained in a single document, where a memorandum did not name the parties to the alleged contract but referred to them as "we" and "our" and also tended to show that further negotiations were intended by the parties, it was not sufficient to satisfy the statute. *Anderson v. KFBB Broadcasting Corp.*, 143 M 423, 391 P 2d 2, distinguished in *Daley v. Daley*, 150 M 432, 436 P 2d 88.

Option Agreement

Evidence of payment of money pursuant to the purchase of real estate for the purpose of persuading seller to hold the deal open for a certain period of time, and the

Part Performance

Where employer had been awarded construction contract to be completed in 360 days and hired employee under oral agreement almost immediately thereafter, fact that contract was later amended resulting in an extension of time to correct construction error did not make it invalid under this section, and therefore did not affect employee's right to recover salary upon being fired, since extension of time was not contemplated in the original contract; fact that employee had worked seven weeks also removed contract from bar of statute under doctrine of part performance. *Fox v. Fifth West, Inc.*, 153 M 95, 454 P 2d 612.

Buyer's tender of payment and a conveyance to be executed by seller did not constitute such performance or memo-

random as to take an oral agreement to sell land out of the operation of this section, where seller did not accept the

tender or execute the conveyance. *Myers v. Bendewald*, 160 M 338, 502 P 2d 412.

CHAPTER 1501—EVIDENCE—PRODUCTION OF—SUBPOENAS

93-1501-1. (10616) Evidence to be produced, by whom.

Burden of Proof

Plaintiff had burden of proof that disputed range rights were based on land other than that purchased jointly by plaintiff and defendant and failure so to prove defeated plaintiff's claim that defendants were not entitled to one-half the appraised value of the range rights. *Watson v. Barnard*, 155 M 75, 469 P 2d 539.

Negligence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to come forth with sufficient evidence to show the lack of due care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. *Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

Where plaintiff alleged giving of notice which defendant denied, notice or lack thereof was put in issue and plaintiff had burden of proof. *Glacier General Assur-*

ance Co. v. State Farm Mutual Automobile Ins. Co., 150 M 452, 436 P 2d 533.

Partial Payment

Partial payment by special deposit was an affirmative defense which debtor had burden of proving in suit on note; that burden of proof required that it be shown that payment was made on the particular obligation in controversy. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

Res Ipsa Loquitur

Res ipsa loquitur does not relieve the plaintiff of the burden of proving actionable negligence, nor is it sufficient that he show that he was injured and that the instrumentality which caused his injury was in the control of the defendant; he must also show that the accident would not have occurred in the ordinary course of events if the defendant had exercised due care. *Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

CHAPTER 1901—EVIDENCE—GENERAL RULES OF EXAMINATION

93-1901-2. (10660) Witness not under examination may be excluded.

Ignorance of Order

Fact that witness did not hear court's order to absent himself from courtroom and, although present during part of another witness's testimony, was allowed to testify, was not reversible error in absence of showing that defendant was prejudiced. *State v. Love*, 151 M 190, 440 P 2d 275.

Officers As Witnesses

Statute does not apply to police officers called as state's witnesses, so that court properly denied defendant's motion to exclude police officers from courtroom before their time to testify. *State v. Fitzpatrick*, 149 M 400, 427 P 2d 300.

93-1901-6. (10664) When witness may refresh memory from notes.

Pretrial Statement

Trial court did not abuse its discretion in permitting state's witness to testify after he had refreshed memory by referring to a statement he had made after shooting incident, in absence of prejudice to defendant and in light of fact that witness acknowledged that he made statement after incident, that he recognized statement and that signature on statement was his. *State v. Gallagher*, 151 M 501, 445 P 2d 45.

Recitals in Instrument

Allowing investigating officer who was testifying at trial to read directly from copy of police report he had prepared was not error where officer relied upon report in order to testify with greater accuracy regarding defendant's admission of guilt. *State v. LaFreniere*, — M —, 515 P 2d 76.

References

State v. Jones, 143 M 155, 387 P 2d 913.

93-1901-7. (10665) Cross-examination, as to what.

Prior Inconsistent Pleading

Complaint filed in previous action by

father alleging boy's leg was 75% permanently disabled, signed under oath by

father, was properly admitted on cross-examination of father who had previously

testified otherwise. *Tigh v. College Park Realty Co.*, 149 M 358, 427 P 2d 57.

93-1901-11. (10668) How impeached.

Collateral Matters

Since a witness cannot be impeached by contradictory evidence on collateral matters, it was reversible error to allow plaintiff for purposes of impeachment to cross-examine defendant regarding a collateral matter, evidence of which had been ruled inadmissible before trial. *Holland v. Biggs*, — M —, 532 P 2d 411.

Contradictory Evidence

Employer's testimony that a truck could not be driven more than 35 to 38 miles per hour could be impeached by testimony that witness had, on a prior occasion, seen the truck traveling at 65 to 70 miles per hour. *Seder v. Peter Kiewit Sons' Co.*, 156 M 322, 479 P 2d 448.

After defendant testified that over the past six years he had "only" been picked up five or six times for driving while his license was suspended, prosecution could properly show the remainder of his rec-

ord, which included fifteen apprehensions for driving without a license, twelve speeding charges, six violations of basic rule, one display of a fictitious driving license, one improper lane usage, and two excessive muffler noise charges. *State v. Deshner* 158 M 188, 489 P 2d 1290.

Criminal Defendant Impeached

Enactment of subsection 95-1506(b) providing that notice and charges of prior convictions for purpose of enhancing sentence shall not be made known to the jury before return of verdict did not change any law relative to use of defendant's record to impeach his testimony should he decide to testify in his own behalf. *State v. Romero*, — M —, 505 P 2d 1207.

References

State v. Lagge, 143 M 289, 388 P 2d 792; *State v. Tully*, 148 M 166, 418 P 2d 549, 550.

93-1901-12. (10669) Impeachment by evidence of declarations.

Prior Inconsistent Pleading

Complaint filed in previous action by father alleging that boy's leg was 75% permanently disabled, signed by father under oath, was properly admitted for purpose of impeaching father who had previously testified otherwise. *Tigh v.*

College Park Realty Co., 149 M 358, 427 P 2d 57.

References

State v. Lagge, 143 M 289, 388 P 2d 792.

93-1901-13. (10670) Evidence of good character—when allowed.

Constructive Fraud

In action for damages by purchasers of land against sellers and their real estate agent, based on a theory of constructive fraud, the character of the defendants was

not in issue and trial court's limitation of number of character witnesses was not prejudicial to defendant. *Goggans v. Winkley*, 159 M 85, 495 P 2d 594.

93-1901-14. (10671) Writing shown to witness may be inspected, etc.

Pretrial Statement of Defendant

The trial court did not err in permitting state's witness to read entire statement of defendant wherein defendant was warned of constitutional rights since it was mate-

rial evidence that defendant's constitutional rights and waiver thereof were clearly and understandably enunciated to defendant. *State v. Lucero*, 151 M 531, 445 P 2d 731.

CHAPTER 2001—EVIDENCE—EFFECT OF

93-2001-1. (10672) Jury judges of effect of evidence, etc.

Subdivision 3

Conviction would not be reversed for giving of instruction based on statute but including words "except in so far as it may be corroborated by other and credible evidence in the case," in absence

of specific showing of prejudice. *State v. Rollins*, 149 M 481, 428 P 2d 462.

Subdivision 4—Accomplice's Testimony

Where the court gave a defendant's instruction quoting this section verbatim

in a criminal case, it may be assumed that the instruction was considered by the jury in weighing the evidence. *State v. Barick*, 143 M 273, 389 P 2d 170.

Subdivisions 6 and 7

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by the deceased during his last illness, evidence that deceased had a half interest in the partnership cattle and failure of defendants to produce any of the partner-

ship records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

References

State v. Lagge, 143 M 289, 388 P 2d 792; *State v. Romero*, 146 M 77, 404 P 2d 500.

CHAPTER 2201—EVIDENCE—RULES IN PARTICULAR CASES

Section 93-2201-7. Settlement of claims—legislative policy.

93-2201-8. "Person" defined.

93-2201-9. Voluntary partial payment of claim not an admission of fault, waiver or release.

93-2201-10. Parts of act not severable.

93-2201-1. (10680) An offer equivalent to tender.

References

Schultz v. Campbell, 147 M 439, 413 P 2d 879.

93-2201-3. (10682) Objections to tender must be specified.

Acts Constituting Waiver

Party who was obligated to sell shares of stock under repurchase agreement waived objections to tender by failing to object to terms of tender, conduct evidencing his willingness to sell and requesting a change in payment terms. *State ex rel. Howeth v. D. A. Davidson & Co.*, — M —, 517 P 2d 722.

Waiver of Tender

Ordinarily, a check is not a tender, but it may be as effective as a tender of currency if there is no timely objection to the form of tender, or if the objection is waived. *Schultz v. Campbell*, 147 M 439, 413 P 2d 879.

93-2201-4. (10683) Rules for construing description of lands.

Improper Description

Where there was improper land description in easement, trial court properly ordered survey of land in question so intent of parties to easement could be effectuated. *City of Missoula v. Rose*, — M —, 519 P 2d 146.

erty lines. *Buckley v. Laird*, 158 M 483, 493 P 2d 1070.

Order of Survey

Trial court properly ordered survey of land allegedly subject to an easement where the description of the land subject to the easement was defective but could be determined pursuant to subsections 2 and 6 of this section. *City of Missoula v. Rose*, — M —, 519 P 2d 146.

Monuments Paramount

A resurvey which paid no attention to artificial monuments relied upon in deeds and used by the owners of the property could not disrupt or change existing prop-

93-2201-7. Settlement of claims—legislative policy. The legislative assembly hereby declares that the health, welfare and safety of the people of the state of Montana would be enhanced by the expeditious handling of liability claims. The legislative assembly further declares that the handling of such claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who has sustained injury to his person or damage to his property could not be construed as an admission of fault or liability as to any claim arising out of the occurrence which gave rise to such injury or damage.

History: En. Sec. 1, Ch. 222, L. 1973.

Title of Act

An act to provide for the voluntary pay-

ment of personal injury or property damage claims without such payment constituting an admission of liability.

93-2201-8. "Person" defined. As used in this act, the word "person" includes any individual, partnership, joint venture, unincorporated association, private or municipal corporation, the state and its political subdivisions.

History: En. Sec. 2, Ch. 222, L. 1973.

93-2201-9. Voluntary partial payment of claim not an admission of fault, waiver or release. No voluntary partial payment of a claim against any person based on alleged liability of that person for injury to person, including death, or damage to property arising out of any occurrence shall be construed as an admission of fault or liability, or as a waiver or release of claim by the person to whom or in whose behalf such payment was made. No voluntary partial payment shall be construed to reduce the amount of damages which may be pleaded or proved in any action arising out of such occurrence. The fact of any such voluntary payment, or its amount, shall not be admissible as evidence on the trial of any action arising out of such occurrence, whether on the issue of liability, the extent of the damage or otherwise. Upon final settlement between the parties of a claim arising out of such occurrence, the parties may make any agreement they wish with respect to all voluntary partial payments. After entry of a judgment in an action for damages for personal injuries, including death, or for damage to property arising out of any occurrence, any voluntary partial payment theretofore made shall be treated as a credit against such judgment, and shall be deductible from the amount of such judgment. If after partial voluntary payments are made as herein provided for, it shall be determined by a court of competent jurisdiction that the person who made such payments, or on whose behalf such payments were made, is liable for an amount which is less than the amount of the voluntary payments already made, such person shall have no right of action for the recovery of the amount by which the voluntary payments exceeded the amount of the judgment.

History: En. Sec. 3, Ch. 222, L. 1973.

93-2201-10. Parts of act not severable. It is the intent of the legislative assembly that each part of this act is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

History: En. Sec. 4, Ch. 222, L. 1973.

CHAPTER 2501—QUESTIONS OF FACT AND LAW—DECISION OF

93-2501-2. (10699) Questions of law addressed to the court.

Admissibility of Sound Recorded Evidence

In order for sound recordings to be admissible into evidence there must be

showing of (1) the capability of the recording device; (2) the competency of the operator; (3) the authenticity of the recording; (4) the fact that no changes or

deletions have been made; (5) the manner of the preservation of the recording; and (6) the identification of the speakers. State v. Smith, — M —, 523 P 2d 1395.

Interpretation of Lease

Interpretation of lease of building was matter for court in dispute between lessor and lessee. Solich v. Hale, 150 M 358, 435 P 2d 883.

CHAPTER 2601—REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

- Section 93-2601-41. Purposes.
 93-2601-42. Definitions.
 93-2601-43. Remedies additional to those now existing.
 93-2601-44. Extent of duties of support.
 93-2601-45. Interstate rendition.
 93-2601-46. Conditions of interstate rendition.
 93-2601-47. Choice of law.
 93-2601-48. Remedies of state or political subdivision furnishing support.
 93-2601-49. How duties of support enforced.
 93-2601-50. Jurisdiction.
 93-2601-51. Contents and filing of petition for support—venue.
 93-2601-52. Officials to represent obligee.
 93-2601-53. Petition for a minor.
 93-2601-54. Duty of initiating court.
 93-2601-55. Costs and fees.
 93-2601-56. Jurisdiction by arrest.
 93-2601-57. State information agency.
 93-2601-58. Duty of the court and officials of this state as responding state.
 93-2601-59. Further duties of court and officials in the responding state.
 93-2601-60. Hearing and continuance.
 93-2601-61. Immunity from criminal prosecution.
 93-2601-62. Evidence of husband and wife.
 93-2601-63. Rules of evidence.
 93-2601-64. Order of support.
 93-2601-65. Responding court to transmit copies to initiating court.
 93-2601-66. Additional powers of responding court.
 93-2601-67. Paternity.
 93-2601-68. Additional duties of responding court.
 93-2601-69. Additional duty of initiating court.
 93-2601-70. Proceedings not to be stayed.
 93-2601-71. Application of payments.
 93-2601-72. Effect of participation in proceeding.
 93-2601-73. Intrastate application.
 93-2601-74. Appeals.
 93-2601-75. Additional remedies.
 93-2601-76. Registration.
 93-2601-77. Registry of foreign support orders.
 93-2601-78. Official to represent obligee.
 93-2601-79. Registration procedure—notice.
 93-2601-80. Effect of registration—enforcement procedure.
 93-2601-81. Uniformity of interpretation.
 93-2601-82. Short title.

93-2601-1 to 93-2601-40. Repealed.

Repeal

Sections 93-2601-1 to 93-2601-40 (Sec. 1, Ch. 208, L. 1961), known as the "Uni-

form Reciprocal Enforcement of Support Act," were repealed by Sec. 44, Ch. 237, Laws 1969.

93-2601-41. Purposes. The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support.

History: En. Sec. 1, Ch. 237, L. 1969.

Compiler's Notes

Section 93-2601-41 to 93-2601-44 comprise Part I of this chapter, as enacted by

Ch. 237, Laws 1969, entitled "General provisions."

NOTE.—The following states have enacted the Revised Uniform Reciprocal Enforcement of Support Act: Arizona,

Idaho, Illinois, Kansas, Nevada, New Mexico, North Dakota, Wisconsin.

Title of Act

An act adopting the Uniform Reciprocal Enforcement of Support Act as revised by the National Conference of Commissioners on Uniform State Laws in 1968; providing additional remedies for enforcement of duties of support; providing for criminal enforcement by extradition; pro-

viding for civil enforcement where parties reside in different states or in different counties of Montana; providing for registration and enforcement of foreign support orders and support orders issued in different counties of Montana; providing for the resolution of paternity and visitation rights if contested, and for appeals; and repealing sections 93-2601-1 through 93-2601-40, R. C. M. 1947.

93-2601-42. Definitions. (a) "Court" means the district court of this state and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.

(b) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this act.

(d) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(e) "Law" includes both common and statutory law.

(f) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "Register" means to file in the registry of foreign support orders.

(j) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(k) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(l) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(m) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and

any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

History: En Sec. 2, Ch. 237, L. 1969.

93-2601-43. Remedies additional to those now existing. The remedies herein provided are in addition to and not in substitution for any other remedies.

History: En. Sec. 3, Ch. 237, L. 1969.

93-2601-44. Extent of duties of support. Duties of support arising under the law of this state, when applicable under section 7 [93-2601-47], bind the obligor present in this state regardless of the presence or residence of the obligee.

History: En. Sec. 4, Ch. 237, L. 1969.

93-2601-45. Interstate rendition. The governor of this state may

(1) demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(2) surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

History: En. Sec. 5, Ch. 237, L. 1969.

Compiler's Notes

Sections 93-2601-45 and 93-2601-46 com-

prise Part II of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Criminal enforcement."

93-2601-46. Conditions of interstate rendition. (a) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this act or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the

governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

History: En. Sec. 6, Ch. 237, L. 1969.

93-2601-47. Choice of law. Duties of support applicable under this act are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: En. Sec. 7, Ch. 237, L. 1969.

Compiler's Notes

Sections 93-2601-47 to 93-2601-74 com-

prise Part III of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Civil enforcement."

93-2601-48. Remedies of state or political subdivision furnishing support. If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

History: En. Sec. 8, Ch. 237, L. 1969.

93-2601-49. How duties of support enforced. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

History: En. Sec. 9, Ch. 237, L. 1969.

93-2601-50. Jurisdiction. Jurisdiction of any proceeding under this act is vested in the district court.

History: En. Sec. 10, Ch. 237, L. 1969.

93-2601-51. Contents and filing of petition for support—venue. (a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(b) The petition may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed

with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

History: En. Sec. 11, Ch. 237, L. 1969.

93-2601-52. Officials to represent obligee. If this state is acting as an initiating state the prosecuting attorney upon the request of the court, a state department of welfare, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this act. If the prosecuting attorney neglects or refuses to represent the obligee the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 12, Ch. 237, L. 1969.

93-2601-53. Petition for a minor. A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

History: En. Sec. 13, Ch. 237, L. 1969.

93-2601-54. Duty of initiating court. If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause three (3) copies of the petition and its certificate and one (1) copy of this act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

History: En. Sec. 14, Ch. 237, L. 1969.

93-2601-55. Costs and fees. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

History: En. Sec. 15, Ch. 237, L. 1969.

93-2601-56. Jurisdiction by arrest. If the court of this state believes that the obligor may flee it may

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

History: En. Sec. 16, Ch. 237, L. 1969.

93-2601-57. State information agency. (a) The state department of social and rehabilitation services is designated as the state information agency under this act, [and] it shall

(1) compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit it to the state information agency of every other state which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other state information agencies;

(2) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this act; and

(3) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to co-operate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to co-operate, and requests made to the social security administration as permitted by the Social Security Act as amended.

(c) After the deposit of three (3) copies of the petition and certificate and one (1) copy of the act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the attorney general who may undertake the representation.

History: En. Sec. 17, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974.

tion, is compiled in the United States Code as Tit. 42, sec. 1306.

Compiler's Notes

The compiler inserted the bracketed word "and" in subsection (a).

The Social Security Act, as amended, referred to in subsection (b) of this sec-

Amendments

The 1974 amendment substituted "state department of social and rehabilitation services" for "state department of public welfare."

93-2601-58. Duty of the court and officials of this state as responding state. (a) After the responding court receives copies of the petition, certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. '18, Ch. 237, L. 1969.

93-2601-59. Further duties of court and officials in the responding state. (a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this act apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

History: En. Sec. 19, Ch. 237, L. 1969.

93-2601-60. Hearing and continuance. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

History: En. Sec. 20, Ch. 237, L. 1969.

93-2601-61. Immunity from criminal prosecution. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate

him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

History: En. Sec. 21, Ch. 237, L. 1969.

93-2601-62. Evidence of husband and wife. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History: En. Sec. 22, Ch. 237, L. 1969.

93-2601-63. Rules of evidence. In any hearing for the civil enforcement of this act the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (section 27 [93-2601-67]) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

History: En. Sec. 23, Ch. 237, L. 1969.

93-2601-64. Order of support. If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this act shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

History: En. Sec. 24, Ch. 237, L. 1969.

93-2601-65. Responding court to transmit copies to initiating court. The responding court shall cause a copy of all support orders to be sent to the initiating court.

History: En. Sec. 25, Ch. 237, L. 1969.

93-2601-66. Additional powers of responding court. In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the clerk; and

(3) punish under the power of contempt the obligor who violates any order of the court.

History: En. Sec. 26, Ch. 237, L. 1969.

93-2601-67. Paternity. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

History: En. Sec. 27, Ch. 237, L. 1969.

93-2601-68. Additional duties of responding court. A responding court has the following duties which may be carried out through the clerk of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

History: En. Sec. 28, Ch. 237, L. 1969.

93-2601-69. Additional duty of initiating court. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

History: En. Sec. 29, Ch. 237, L. 1969.

93-2601-70. Proceedings not to be stayed. A responding court shall not stay the proceeding or refuse a hearing under this act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

History: En. Sec. 30, Ch. 237, L. 1969.

93-2601-71. Application of payments. A support order made by a court of this state pursuant to this act does not nullify and is not nulli-

fied by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

History: En. Sec. 31, Ch. 237, L. 1969.

93-2601-72. Effect of participation in proceeding. Participation in any proceeding under this act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

History: En. Sec. 32, Ch. 237, L. 1969.

93-2601-73. Intrastate application. This act applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

History: En. Sec. 33, Ch. 237, L. 1969.

93-2601-74. Appeals. If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may

(a) perfect an appeal to the proper appellate court if the support order was issued by a court of this state, or

(b) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

History: En. Sec. 34, Ch. 237, L. 1969.

93-2601-75. Additional remedies. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

History: En. Sec. 35, Ch. 237, L. 1969.

Compiler's Notes

Sections 93-2601-75 to 93-2601-82 com-

prise Part IV of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Registration of foreign support orders."

93-2601-76. Registration. The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

History: En. Sec. 36, Ch. 237, L. 1969.

93-2601-77. Registry of foreign support orders. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

History: En. Sec. 37, Ch. 237, L. 1969.

93-2601-78. Official to represent obligee. If this state is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court, a state department of social and rehabilitation services, a county commissioner, or other local welfare official shall represent the obligee in proceeding under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 38, Ch. 237, L. 1969; "state department of social and rehabilitation services" for "state department of welfare."
amd. Sec. 48, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted

93-2601-79. Registration procedure — notice. (a) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court (1) three (3) certified copies of the order with all modifications thereof, (2) one (1) copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this act.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

History: En. Sec. 39, Ch. 237, L. 1969.

93-2601-80. Effect of registration — enforcement procedure. (a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registra-

tration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

History: En. Sec. 40, Ch. 237, L. 1969.

93-2601-81. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 41, Ch. 237, L. 1969.

93-2601-82. Short title. This act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

History: En. Sec. 42, Ch. 237, L. 1969.

Separability Clause

Section 43 of Ch. 237, Laws 1969 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect with-

out the invalid provision or application, and to this end the provisions of this act are severable."

Repealing Clause

Section 44 of Ch. 237, Laws 1969 read "Sections 93-2601-1 through 93-2601-40, R. C. M. 1947, are repealed."

CHAPTER 2701

MONTANA RULES OF CIVIL PROCEDURE

II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule

4. Persons subject to jurisdiction—Process—Service.
 - A. DEFINITION OF PERSON.
 - B. JURISDICTION OF PERSONS.
 - (1) Subject to Jurisdiction.
 - (2) Acquisition of Jurisdiction.
 - C. PROCESS.
 - (1) Summons—Issuance.
 - (2) Summons—Form.
 - D. SERVICE.
 - (1) By Whom Served.
 - (2) Personal Service Within the State.
 - (3) Personal Service Outside the State.
 - (4) Other Service.
 - (5) Service by Publication—When Permitted—Effect—Manner—Proof.
 - (a) When Permitted.
 - (b) Effect of Service by Publication.
 - (c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication.
 - (d) Number of Publications.
 - (e) Mailing Summons and Complaint.
 - (f) Time When First Publication or Service Outside State Must Be Made.
 - (g) When Service by Publication or Outside State Complete.
 - (h) Additional Information to Be Published.
 - (6)
 - (a) Service on Secretary of State.
 - (b) [Continuance to Allow Defense.]
 - (7) Amendment.
 - (8) Proof of Service.
 - (9) Contents of Affidavit of Service.
 - (10) Procedure Where Only Part of Defendants Are Served.
5. Service and filing of pleadings and other papers.
 - (a) SERVICE—WHEN REQUIRED.
6. Time.
 - (b) ENLARGEMENT.

RULES OF CIVIL PROCEDURE

III. PLEADINGS AND MOTIONS

8. General rules of pleading.
 - (b) DEFENSES—FORM OF DENIALS.
 - (c) AFFIRMATIVE DEFENSES.
12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.
 - (b) HOW PRESENTED.
 - (d) PRELIMINARY HEARINGS.
 - (g) CONSOLIDATION OF DEFENSES IN MOTION.
 - (h) WAIVER OR PRESERVATION OF CERTAIN DEFENSES.
13. Counterclaim and cross-claim.
 - (h) JOINDER OF ADDITIONAL PARTIES.
15. Amended and supplemental pleadings.
 - (c) RELATION BACK OF AMENDMENTS.

IV. PARTIES

17. Parties plaintiff and defendant—Capacity.
 - (a) REAL PARTY IN INTEREST.
18. Joinder of claims and remedies.
 - (a) JOINDER OF CLAIMS.
19. Joinder of persons needed for just adjudication.
 - (a) PERSONS TO BE JOINED IF FEASIBLE.
 - (b) DETERMINATION BY COURT OF WHENEVER JOINDER NOT FEASIBLE.
 - (c) PLEADING REASONS FOR NONJOINDER.
 - (d) EXCEPTION OF CLASS ACTIONS.
20. Permissive joinder of parties.
 - (a) PERMISSIVE JOINDER.
23. Class actions.
 - (a) PREREQUISITES TO A CLASS ACTION.
 - (b) CLASS ACTIONS MAINTAINABLE.
 - (c) DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED—NOTICE—JUDGMENT—ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.
 - (d) ORDER IN CONDUCT OF ACTIONS.
 - (e) DISMISSAL OR COMPROMISE.
 - (f) SECURITY FOR COSTS.
- 23.1. Derivative actions by shareholders.
- 23.2. Actions relating to unincorporated associations.
24. Intervention.
 - (a) INTERVENTION OF RIGHT.
 - (c) PROCEDURE.

RULES OF CIVIL PROCEDURE

V. DEPOSITIONS AND DISCOVERY

- 26. Depositions pending action.
 - (e) OBJECTIONS TO ADMISSIBILITY.
- 28. Persons before whom depositions may be taken.
 - (b) IN FOREIGN COUNTRIES.
 - (e) DEPOSITION TO BE TAKEN IN SISTER STATES AND FOREIGN COUNTRIES FOR USE IN THIS STATE.
- 30. Depositions upon oral examination.
 - (f) CERTIFICATION AND FILING BY OFFICER—COPIES—NOTICE OF FILING.
- 33. Interrogatories to parties.
- 35. Physical and mental examination of persons.
 - (b) REPORT OF FINDINGS.
 - (2) Waiver of Privilege.

VI. TRIALS

- 41. Dismissal of actions.
 - (b) INVOLUNTARY DISMISSAL—EFFECT THEREOF.
 - (e) FAILURE TO SERVE SUMMONS.
- 43. Evidence.
 - (f) INTERPRETERS.
- 44. Proof of official record.
 - (a) AUTHENTICATION.
 - (1) Domestic.
 - (2) Foreign.
 - (b) LACK OF RECORD.
 - (c) OTHER PROOF.
- 44.1. Determination of foreign law.
- 46. Exceptions unnecessary.
- 47. Jurors.
 - (b) MANNER OF SELECTION AND ORDER OF EXAMINATION OF JURORS.
- 50. Motion for a directed verdict and for judgment notwithstanding the verdict.
 - (a) MOTION FOR DIRECTED VERDICT—WHEN MADE, EFFECT.
 - (b) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.
 - (c) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—CONDITIONAL RULINGS ON GRANT OF MOTION.
 - (d) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—DENIAL OF MOTION.
- 52. Findings by the court.
 - (a) EFFECT.
 - (b) AMENDMENT.

RULES OF CIVIL PROCEDURE

VII. JUDGMENT

55. Default.

- (b) JUDGMENT.
 - (2) By the Court.

56. Summary judgment.

- (c) MOTION AND PROCEEDINGS THEREON.

59. New trials—Amendment of judgments.

- (a) GROUNDS.
- (b) TIME FOR MOTION.
- (c) TIME FOR SERVING AFFIDAVITS.
- (d) TIME FOR HEARING ON MOTION.
- (e) ON INITIATIVE OF COURT.
- (f) MOTION TO ALTER OR AMEND A JUDGMENT.

60. Relief from judgment or order.

- (b) MISTAKES—INADVERTENCE—EXCUSABLE NEGLECT—NEWLY DISCOVERED EVIDENCE—FRAUD, ETC.
- (c) TIME FOR HEARING AND DETERMINING MOTIONS.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

68. Offer of judgment.

IX. APPEALS

72. Appeal from a district court to the supreme court.

X. DISTRICT COURTS AND CLERKS

77. District courts and clerks.

- (e) TRANSMITTAL OF FILE ON REMOVAL.

XI. GENERAL PROVISIONS

86. Effective date—Statutes superseded.

- (a) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.
- (b) STATUTES SUPERSEDED.

TABLE B. List of rules superseding statutes.

C. List of statutes superseded by rules.

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of rules.

References

Spaberg v. Johnson, 143 M 500, 392 P
2d 78.

II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

- Rule 4. Persons subject to jurisdiction—Process—Service.
5. Service and filing of pleadings and other papers.
6. Time.

Rule 4. Persons subject to jurisdiction—Process—Service.

A. DEFINITION OF PERSON. As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in his own name or under a trade name; an individual's agent or personal representative; a corporation; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment restated this rule without change.

B. JURISDICTION OF PERSONS.

(1) Subject to Jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

- (a) the transaction of any business within this state;
- (b) the commission of any act which results in accrual within this state of a tort action;
- (c) the ownership, use or possession of any property, or of any interest therein, situated within this state;
- (d) contracting to insure any person, property or risk located within this state at the time of contracting;
- (e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or
- (f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as executor or administrator of any estate within this state.

(2) Acquisition of Jurisdiction. Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment restated this rule without apparent change.

Affidavit in Denial of Jurisdiction

Affidavit of corporation stating that it had no "representative resident" in Montana, but also stating that "orders received from dealers in Montana are accepted in Indiana," did not satisfactorily answer plaintiff's allegation that defendant

had an agent in Montana, nor did it answer the allegation under subdivision (1) (b) that defendant had violated its warranties and committed torts against the plaintiff in Montana. *Harrington v. Holiday Rambler Corp.*, — M —, 525 P 2d 556.

Contracts

Although primary negotiations for sale of membership in stock exchange were had in Utah, locus of contract was in Montana and jurisdiction was acquired under this section in view of fact that negotiations continued via telephone and mail in Montana, that delivery was contemplated and would be made in Mon-

tana, and that purchase money mortgage or equivalent lien would follow subject matter of contract to Montana. State ex rel. Goff v. District Court, 157 M 495, 487 P 2d 292.

Nonresident Corporation Jurisdiction

Montana court acquired in personam jurisdiction over nonresident corporation under portions of rule subjecting persons, who transact any business within Montana and persons entering into contracts for services to be rendered in Montana, to jurisdiction of Montana notwithstanding corporation's contention that most of its Montana business and services it rendered and materials it furnished were within federal enclave known as Malstrom Air Force Base. Swanson Painting Co. v. Painters Local Union No. 260, 391 F 2d 523.

In products liability suit instituted by resident, state properly exercised in personam jurisdiction over nonresident manufacturer under long-arm provision relating to commission of act resulting in accrual within state of tort action notwithstanding manufacturer's contention that action offended due process requirements of "fundamental fairness" and "minimum contacts"; action was proper despite facts that defendant maintained no office in state, had no representative resident in or assigned to Montana, received orders from wholesale or retail outlets in Illinois, and had Montana business consisting of less than one-half of one per cent of its total business where foreign corporation deliberately engaged in a policy which was intended to put so much of its product into the state as the market would absorb. Bullard v. Rhodes Pharmacal Co., 263 F Supp 79, distinguished in 341 F Supp 560, 562.

Long-arm jurisdiction obtained over nonresident defendant for commission of act which results in accrual within state of tort action and for entering into contract for services to be rendered or for materials to be furnished in state did not violate due process requirements as embodied in "minimum contacts" test in view of evidence that defendant manufactured products for national and interstate market; that valve was ordered by specifications; that defendant knew at time of shipment that it would be used in Montana; that defendant knew that negligent manufacture might constitute a serious hazard; and that the explosion allegedly resulting from defective valve occurred in Montana. Continental Oil Co. v. Atwood & Morrill Co., 265 F Supp 692, distinguished in Yules v. General Motors Corp., 297 F Supp 674.

Exercise of long-arm jurisdiction over nonresident defendant for commission of

act which results in accrual within state of tort action did not violate due process requirements and was within "minimum contacts" rule in view of evidence that nonresident manufacturer knew that cableway it manufactured would be used on construction site in state and that it sent several of its employees to state to inspect cableway. Hartung v. Washington Iron Works, 267 F Supp 408.

Montana properly exercised in personam jurisdiction over nonresident assignee of retail installment sales contract in suit for assignee's conversion of truck by repossessing it under provision relating to commission of any act which results in accrual within state of tort action; action was proper notwithstanding assignee's due process contentions in that his activities in Montana were insufficient in view of evidence that when contract was assigned, the assignee knew vehicle would be used throughout United States; that assignee did not object when truck was moved to Montana and thereafter accepted payments mailed from Montana; that following accident in South Dakota, vehicle was removed to Montana at assignee's request; and that assignee had its agent, a wholly owned subsidiary, repossess truck in Montana and take necessary steps to obtain title to it. Boyt v. Emmco Ins. Co., 271 F Supp 366.

A corporation is not "found within the state of Montana" unless it has agents or officers upon whom process may be served or unless its business has been of such character and extent as to warrant the inference that it has subjected itself to the jurisdiction of the state; such an inference cannot arise by the mere solicitation of business and shipment of product into the state and occasional trips by an officer or agent into the state for solicitation purposes. McIntosh v. Heil Co., 350 F Supp 866.

Retroactive Application

This rule applied to act of alleged malpractice occurring in Montana prior to effective date of this rule (Rule 86(a)) and doctor who had not resided in Montana since effective date of rule could be served properly with process, under Rule 4D(3), in California. State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 111.

The giving effect to the service of summons provisions of this rule, when the operative facts of the case to which the rule was applied had taken place prior to the effective date of the Montana Rules of Civil Procedure as set out in Rule 86 (a) was not a prohibited retroactive application of this rule within the meaning of section 12-201. Weber v. Hydroponics, Inc., 226 F Supp 117, 118.

Service of Process Within Exterior Boundaries of Indian Reservation

Service of process on Indian defendant in divorce action was effective where marriage took place off the reservation; service of process on Indian reservation was not violation of Indian tribe's sovereignty under United States law. *Bad Horse v. Bad Horse*, — M —, 517 P 2d 893.

Tort Accruing

Swedish corporation which sold ammunition throughout the United States through an American distributor subjected itself to Montana jurisdiction when defective ammunition sold in Idaho resulted in injury in Montana. *Scanlan v. Norma Projektil Fabrik*, 345 F Supp 292.

Transacting Business

State had jurisdiction over person of nonresident defendant who placed pur-

chase order directly with a Montana wholesaler once and paid by direct check to the wholesaler on several occasions, even though defendant had never personally met plaintiff nor been in the state. *Prentice Lumber Co. v. Spahn*, 156 M 68, 474 P 2d 141.

Personal services of employee doctor of hospital in Minnesota, rendered to plaintiff in Montana at plaintiff's convenience and incidental to employee's personal journey to Montana, was not sufficient to bring hospital under jurisdiction of Montana for a tort occurring in Minnesota. *Aylstock v. Mayo Foundation*, 341 F Supp 560.

Law Review

Ganz, "Doing Business" in Illinois as a Basis of Jurisdiction Over Nonresidents—Due Process and Contracts," Vol. 1, No. 4 *Illinois Continuing Legal Education* 75 (October 1963).

C. PROCESS.

(1) **Summons—Issuance.** Upon the filing of the complaint, the clerk shall forthwith issue a summons, and shall deliver the summons either to the sheriff of the county in which the action is filed, or to the person who is to serve it, or upon request, to the attorney for said party who shall thereafter be responsible to see that the summons is served in the manner prescribed by these rules. Upon request, separate or additional summons shall issue against any parties designated in the original action, or against any additional parties who may be brought into the action.

(2) **Summons—Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to land situated in _____ County, Montana, and described as follows: (Here insert descriptions of land.)" For exceptions to this form of summons see 4D(4) "Other Service," set forth hereinafter.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The 1965 amendment made minor changes in the caption to paragraph (2) and in references to R. C. M. 1947.

The amendment of September 29, 1967 substituted the last sentence in subdivi-

sion (2) for former sentence requiring compliance with sections 84-4165 and 93-6228 and with provisions of Rule 4D(5) (h); and made minor changes in phraseology.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

This amendment, together with the change in 4D(4), is intended to make it clear that there is no conflict between the

requirements of the rules with respect to summons for publication and the requirements of section 93-6228, and that section 93-6228 governs actions to establish title

to property granted to heirs of deceased entryman but has no application to other actions.

D. SERVICE.

(1) By Whom Served. Service of all process shall be made by a sheriff of the county where the party to be served is found, by his deputy, by a constable authorized by law, or by any other person over the age of 21 not a party to the action, except that a subpoena may be served as provided in Rule 45.

(2) Personal Service Within the State. The summons and complaint shall be served together, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to him personally, and by leaving a copy thereof at his dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to his guardian, if he has one within the state, and if not, then to his father or mother or other person or agency having his care or control, or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to his guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon him. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any

other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to the registered agent of said corporation named on the records of the Secretary of State, or to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of \$5.00 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the

state of Montana or, in his absence from his office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of state shall make his return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within sixty days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the governor, or to any member of such state board or state agency, and also by delivering an additional copy of the summons and complaint to the attorney general.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

(3) Personal Service Outside the State. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

(4) Other Service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions hereafter prescribed in D(5)(h), and with the provisions of sections 40-2819, 40-3405, 40-3406, 40-3423, 40-3424, 93-6228, 93-6229, 93-6230, and 93-6232, R. C. M. 1947, when the action pertains to the provisions of such sections.

(5) Service by Publication — When Permitted — Effect — Manner — Proof.

(a) When Permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for divorce or for annulment of marriage of a resident of this state or for modification of a decree of divorce granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent

of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of Service by Publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that he has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that he has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of court.

(d) Number of Publications. Service of the summons by publication may be made by publishing the same three times, once each week for three successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing Summons and Complaint. A copy of the summons

for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at his place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time When First Publication or Service Outside State Must Be Made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When Service by Publication or Outside State Complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h) Additional Information to Be Published. In addition to the form of summons prescribed above in "C. Process, (2) Summons—Form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on Secretary of State. Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of the court in which such claim for relief is pending the sum of five dollars to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive such service; then the clerk shall forward the orig-

inal summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or his deputy to the party to be served at his last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or his deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or his deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon him by the clerk of court, including the day, and hour of such service; (2) the fact of his mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where he is relieved from doing so under the provisions of D(2)(f) in which cases his affidavit shall so recite; and (3) the fact of his receipt of a return from the postal department including the date, and hour thereof, and attaching to his affidavit a copy of such return. The secretary of state, or his deputy, shall then transmit the original summons, and his original affidavit along with copy of his notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in his office a copy of the summons, a copy of the affidavit served on him by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) [Continuance to Allow Defense.] In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such

continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of Service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, his certificate thereof;

(b) If by any other person, his affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or

(d) The written admission of the defendant showing the date and place of **service**.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of Affidavit of Service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure Where Only Part of Defendants Are Served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause him to appear in said court to show cause why he should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1965 amendment rewrote paragraphs (e) and (f) of subdivision (2), for previous text of which see parent volume; substituted "if the defendant is a

domestic or foreign corporation, that none of the persons designated in D(2)(e) above can" for "that the defendant, if a domestic or foreign corporation, has no agent for the service of process, nor managing nor business agent, cashier, secretary, or other officer who can" in clause (ii) of paragraph (5)(c); inserted "and if desired, it may be combined in one instrument with the affidavit required under 4 D(2)(f), or 4 D(6)" at the end of clause (ii) of paragraph (5)(c); substituted the second sentence of paragraph (5)(e) for two sentences applying only to foreign corporations, for text of which see parent

volume; substituted "any party intended to be served by such publication" for "any person not served within said 60-day period" at the end of paragraph (5)(f); completely rewrote subdivision (6), for previous text of which see parent volume; inserted "by" in clause (8)(b); and made minor style changes in paragraphs (3), (4), and (5)(a)(iv).

The amendment of September 7, 1965, in subdivision (2), deleted "or attorney" in clause (i) of paragraph (e) and, in paragraph (f), substituted "court of this state" for "court in this state" in the first clause of the first sentence, substituted "subject to the jurisdiction * * * Rule 4B above" for "actually doing business within Montana or was actually doing business in Montana at the time the claim for relief arose," in the second clause of the first sentence, and substituted "persons" for "person" in the fourth sentence.

The amendment of November 28, 1966 added paragraph (i) of subdivision (2); in the second sentence of subdivision (3), deleted "of summons" after "Where service," deleted "made after the filing of the required complaint and required affidavit for publication" after "out of the state," inserted the reference to 4(5)(c), and made other changes in phraseology; and, in clause (8)(d), substituted "date" for "time."

The amendment of September 29, 1967, in subdivision (4), inserted "with the provisions hereafter prescribed in D(5)(h), and" and "93-6228."

The 1971 amendment inserted in subdivision (2)(e)(ii) the provision for service on the registered agent named in the records of the secretary of state.

Commission Note to 1965 Amendment

Because of criticism from several members of the Bar, as well as the office of the Secretary of State, changes have been made in the provisions of Rule 4. In addition, some housekeeping changes have also been made.

We have inserted at the points where changes or additions have been made the new language italicized [not italicized herein; see Amendment note above].

Several members of the Bar have called the attention of the Rules Committee to the fact that particularly in quiet title actions, where defunct corporations were involved, and where none of the persons could be found with due diligence upon whom service could be completed that would be binding on the defunct corporation, that effective service could not be obtained by reason of the requirement of a return of a registered receipt showing delivery of the summons and complaint to the defunct corporation. We have now corrected that defect. In doing so, we

have also brought within the framework of Rule 4 the provisions of R. C. M. 1947, Sections 93-3008, 93-3011, and 93-3012, which will be superseded. In addition, as long as we are changing Rule 4, we have now specified and delineated the same persons to be served whether or not the defendants are domestic or foreign corporations, or domestic or foreign partnerships or other unincorporated associations. It will be recalled that when Rule 4 was first promulgated, and in an effort not to bring about any changes in our prior practice, the old, separate, segregated statutes pertaining to domestic and foreign corporations were segregated in Rule 4. There is no reason, however, why the same persons should not be delineated for both domestic and foreign corporations, and we have now done so in this new writing of Rule 4.

In lieu of the requirement of a return receipt signed on behalf of the corporations, which in many instances cannot be accomplished, as pointed out in the criticism from the Bar, we have now added a requirement for publication of summons against such corporation where none of the persons can be found with due diligence upon whom personal service can be completed. (See the new D(2)(f). In so providing, however, we have now spelled out that the same procedure for publications shall be followed for serving corporations personally in in personam actions, as we have provided for serving such corporations by publication in in rem actions (see D(5)(e)).

Accordingly, we have made an effort to combine and streamline service on corporations by designating the same individual persons who can be served, whether the corporations are domestic or foreign, and providing the same procedure of publication where such persons cannot be found with due diligence, whether or not the defendants are domestic and foreign, and we have eliminated the necessity of the return of a signed registry receipt objected to so heavily by the Bar.

A second important change in the rule is specific authorization for an attorney for the plaintiff to incorporate within the framework of one single affidavit all the material necessary for serving defunct corporations personally, for serving by way of publication, and for serving the secretary of state.

Changes have also been made in those portions of the rule providing for service on the secretary of state. We have eliminated the necessity of the intermediate step of having summons and complaint go through the hands of the sheriff in Lewis and Clark County; we have cut down on the papers that must be kept on file by the secretary of state, particularly eliminating the necessity of his keeping a

copy of the complaint; and we have provided a requirement that the secretary of state shall now serve upon the attorney for the plaintiff the factual information showing what was done by the secretary of state in effecting service, and the date when it was accomplished.

There are other minor housekeeping changes in the rule, and wherever there is any change, omission, alteration, or new language, reference to it is contained at the points where such is accomplished.

Commission Note to September 7, 1965 Amendment

The amendments to Rule 4D(2) as to (e) is to remove an "attorney" because of doubt as to who would be such within the meaning of the Rule. As to (f) to avoid possible conflict of the provisions of this subdivision and those of 4B.

The other amendments [Rules 50(b), 52(b), 59(e) and 60(c)] will expedite the hearing and determination of the motions involved, and provide a time after submission within which the motions are deemed denied if the court fails to decide them.

Advisory Committee's Note to November 28, 1966 Amendment

Rule 4D(2)(i): The purpose of the amendment is to remove doubts as to the manner of suing an estate and a trust, resultant from the inclusion of "an estate" and "a trust" in the definition of a person in 4A.

Rule 4D(3): To make it clear that the personal service outside this state dispenses with the necessity for following the procedure for service by publication prescribed by 4D(5). The provision for service of "a summons and complaint" permits personal service of either the original summons or the summons for publication, together with the complaint. As provided in 4D(5)(g), in case of personal service outside of this state service is complete on the date of such service.

Rule 4D(8)(d): To make it clear that it is the date and not the hour of day which should be shown in the admission of service. The time requirement in certificates or affidavits of personal service is considered desirable and no change in the last paragraph of 4D(8) is recommended.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

See Committee's Note to 42C(2).

Retroactive Application

Rule 4B(1), applied to act of alleged malpractice occurring in Montana prior to the effective date of this rule (Rule 86(a)) and doctor who had not resided in Montana since effective date of rule could properly be served with process in California under this rule. State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 111.

DECISIONS UNDER FORMER LAW

Paragraph (2)

The doctrine of ostensible agency under section 2-205 has no application in determining whether service of process has been legally made on a "managing or general agent" within the meaning of this rule. Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151.

Paragraph (5)

Jurisdiction of the court attaches at the time of personal service of the complaint and summons, so that a prematurely en-

tered default judgment is voidable and not void. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

Paragraph (8)

Appearance and waiver executed by a foreign corporation, not qualified to do business in Montana, acknowledging receipt of amended complaint filed by plaintiff sufficiently complied with former section 93-3018. Greene Plumbing & Heating Co. v. Morris, 144 M 234, 395 P 2d 252, 255.

Rule 5. Service and filing of pleadings and other papers.

(a) **SERVICE—WHEN REQUIRED.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting

new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

History: En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 inserted "Except as otherwise provided in these rules" at the beginning of the first sentence; deleted "affected thereby, but" at the end of the first sentence, making the remainder of the original sentence into the second sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 5(a), as amended 1963.

Explanation of change: The words "af-

ected thereby" stricken out by the amendment, introduced a problem of interpretation. The amendment eliminates this difficulty and promotes full exchange of information among the parties by requiring service of papers on all the parties to the action, except as otherwise provided in the rules.

Notice of Entry of Judgment Omitted

The date of service of notice of entry of judgment is the arbitrary point in time from which the time limits for appeal begin to run. If no notice of entry of judgment has been served upon the losing party, the right to appeal has not expired. *Haywood v. Sedillo*, — M —, 535 P 2d 1014.

Rule 6. Time.

(a) COMPUTATION.

Statute of Limitations

Complaint filed three years and one day after act in suit governed by three-year statute of limitations was timely where

last day of three-year period was Sunday. *Grey v. Silver Bow County*, 149 M 213, 425 P 2d 819.

(b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d), (e) and (f), and 60(b), except to the extent and under the conditions stated in them.

History: En. Sec. 6, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 inserted the reference to Rule 50(f).

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Reference to "59(f)" is added to conform with amendments to Rule 59.

III. PLEADINGS AND MOTIONS

Rule 8. General rules of pleading.

12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.

13. Counterclaim and cross-claim.

15. Amended and supplemental pleadings.

Rule 7. Pleadings allowed—Form of motions.

(a) PLEADINGS.

Reply

A plaintiff is not required to reply to an answer where not specifically ordered

to do so by the court, nor is it mandatory to reply to an affirmative defense of a release, since under Rule 8(d), where no

responsive pleading is required, the averment is deemed denied. *Wheat v. Safe-way Stores, Inc.*, 146 M 105, 404 P 2d 317.

References

Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

(b) MOTIONS AND OTHER PAPERS.

New Trial Motion

It was error to grant a new trial based on a motion that did not state the grounds

with particularity but rather stated the grounds in the words of section 93-5603. *Halsey v. Uithof*, — M —, 532 P 2d 686.

(c) DEMURRERS, PLEAS, ETC., ABOLISHED.

References

Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100.

Rule 8. General rules of pleading.

(a) CLAIMS FOR RELIEF.

Amended Complaint

"Amended complaint" filed under original cause number, was a valid, initial complaint where it satisfied requirements of notice despite fact that previous complaint had been withdrawn and dismissed without prejudice. *Butte Country Club v. Metropolitan San. & S. S. D. No. 1*, — M —, 519 P 2d 408.

Failure to Plead Claim

Where plaintiff failed to plead claim for deficiency judgment on balance remaining after sale of repossessed vehicles, no deficiency judgment could be rendered and the pleadings could not be amended to conform even though evidence had been received which might have supported such a judgment. *Gallatin Trust & Savings Bank v. Darrah*, 152 M 256, 448 P 2d 734.

Insufficient Complaint

Complaint for libel alleging that defendant while acting within the course and scope of his employment caused employer to terminate plaintiff's contract, was a contradiction, and was insufficient to allege libel or interference with contract. *Baillie v. Rollins*, — M —, 530 P 2d 440.

Notice Pleading

Where pleading titled "Amended Complaint" which satisfied notice and other requirements of statute was filed, it was valid initial complaint under modern rules of notice pleading. *Butte Country Club v. Metropolitan Sanitary and Storm Sewer District No. 1*, — M —, 519 P 2d 408.

Separate Claims on Note and Mortgage

Upon default in an action against the unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note may properly proceed at its option against either security in the same action. *Bozeman Deaconess Foundation v. Cowgill*, 143 M 98, 387 P 2d 435.

Statute of Limitations

Although the statute of limitations need not be negated in the complaint, the court should consider whether a motion to amend a complaint relates back to the original complaint and so avoids the bar of the statute of limitations. *Prentice Lumber Co. v. Hukill*, 161 M 8, 504 P 2d 277.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365; *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 93.

(b) DEFENSES—FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his

denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment substituted "or" for "of" after "only a part" in the fourth sentence.

(c) **AFFIRMATIVE DEFENSES.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Country Club v. Metropolitan San. & S. S. D. No. 1, — M —, 519 P 2d 408.

Amendment

The 1964 amendment substituted "affirmatively" for "affirmative" after "shall set forth" in the first sentence.

Insurance Policy Exclusions

Insurer need not affirmatively plead exceptions and exclusions from coverage contained in policy where entire policy and insurer's denial of coverage were incorporated in insured's pleadings. *Home Ins. Co. v. Pinski Bros., Inc.*, 156 M 246, 479 P 2d 274.

Laches

Defendant who failed to plead laches as an affirmative defense in his answer waived such defense and could not raise the issue in a post-trial motion to dismiss. *Hansen v. Kiernan*, 159 M 448, 499 P 2d 787.

Partial Payment

Partial payment by special deposit was an affirmative defense which debtor had burden of proving in suit on note; that burden of proof required that it be shown that payment was made on the particular obligation in controversy. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

Pleadings

Defendant was not entitled to raise statute of limitations by motion to dismiss since statute of limitations defense is to be pleaded affirmatively. *Butte*

Res Judicata

Where supreme court affirmed dismissal of complaint by trial court on ground that complaint was unverified as required by section 93-3702 and on additional ground that complaint failed to state a claim upon which relief could be granted and a week later plaintiff filed a second verified amended complaint which eliminated confusion, the issue of res judicata was not so clear that the supreme court on the second appeal could say that the trial court could have found the defense of res judicata available without an answer under Rule 8(c) or responsive pleading to present the record of the former judgment plus a statement to show why it should be treated as res judicata. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 748.

Statute of Limitations

Where plaintiff filed complaint alleging injury to real property more than two years after injury occurred, defendants waived defense of statute of limitations when they failed to plead it affirmatively. *Butte Country Club v. Metropolitan Sanitary and Storm Sewer District No. 1, — M —, 519 P 2d 408.*

Unavoidable Accident

Unavoidable accident is not among defenses that must be pleaded affirmatively and is covered under general denial of negligence. *Graham v. Rolandson*, 150 M 270, 435 P 2d 263.

Waiver Refuted by Evidence

Defense of waiver of breach of warranty was refuted by evidence that the plaintiff, although retaining defective computer for nearly eight months, made numerous complaints resulting in almost daily service calls and shut-downs for repairs. *Lovely*

v. Burroughs Corp., — M —, 527 P 2d 557.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

(d) EFFECT OF FAILURE TO DENY.**Answer**

No further proof of heirship was required and summary judgment was proper where portion of paragraph in complaint alleging heirship was admitted in answer. *Sikora v. Sikora*, 160 M 27, 499 P 2d 808.

Reply

The stipulation in this rule that averments in answer to which no responsive pleading is required are denied, read in conjunction with Rule 7(a), does not compel the plaintiff to reply to an answer averring the affirmative defense of a release. *Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

(e) PLEADING TO BE CONCISE AND DIRECT—CONSISTENCY.**Form of Pleading**

No particular form of pleading is necessary to seek partition of property in a divorce proceeding, and where plaintiff prayed that the court settle and adjust the property rights of the parties, includ-

ing partition or sale of the property if necessary, and both sides briefed and argued the issue, there was sufficient notice to defendant and partition was proper. *Hodgson v. Hodgson*, 156 M 469, 482 P 2d 140.

Rule 9. Pleading special matters.**(b) FRAUD, MISTAKE, CONDITION OF THE MIND.****References**

Brooks v. Brooks Pontiac, Inc., 143 M 256, 389 P 2d 185.

(c) CONDITIONS PRECEDENT.**General Denial**

In action by materialman against general contractor for material supplied subcontractor, contractor could not make affirmative defense that statutory notice was not given under materialmen's statute after materialman alleged that he had complied with all conditions precedent to bringing suit and contractor entered general denial; general denial of allegation

that all conditions precedent were performed did not put matter in issue and would be treated as admission that they were performed. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

Rule 11. Signing of pleadings.**Lack of Verification**

Where a complaint was prepared to conform to this rule but lacked verification, and defendant waited until after he received an adverse judgment to raise the

issue in a motion to dismiss on appeal, such motion failed as his proper remedy would have been a motion to strike under Rule 12. *Adams v. Davis*, 142 M 587, 386 P 2d 574.

Rule 12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.**(a) WHEN PRESENTED.****Pleading after Denial of Motion**

Defendants had twenty days from day on which motion to dismiss complaint

was denied in which to serve and file responsive pleading. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

DECISIONS UNDER FORMER LAW

Default Taken Prematurely

Husband who went to Canada and was personally served there in divorce action had forty days in which to answer under the combined time allotted in former Rules 4(D)(5)(g) and 12(a), M. R. Civ. P., and default taken before that time was voidable. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

Jurisdiction

Jurisdiction of the court attaches at the time of personal service of the complaint and summons, so that a prematurely entered default judgment is voidable and not void. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

(b) **HOW PRESENTED.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(i) The cases in which place of trial may be changed are specified in section 93-2906, R. C. M. 1947.

(ii) If the county designated in the complaint is not the proper county for trial of the action, the defendant must at the time of his first appearance request by motion that the trial be had in the proper county. Every defense in law or fact, to a claim for relief in any pleading which defendant desires to present by way of motion as hereinabove provided must be joined with, or inserted in, the motion requesting a change in the place of trial. If the court in which the action is commenced grants the request for change of venue, that court shall not consider nor pass upon other defenses in law, or fact, presented by the motion, but such shall be considered and decided by the court sitting in the proper county after the transfer has been completed. No request for change of venue is waived by being joined in a motion with other defenses or objections in law or fact.

(iii) Any request for change in place of trial for grounds 2 and 3 of section 93-2906, R. C. M. 1947, must be presented by motion within 20 days after the answer to the complaint, or to the cross-claim where a cross-claim is filed, or the reply to any answer, in those cases in which a reply is authorized, has been filed; except that whenever at some time more than

twenty days after the last pleading has been filed an event occurs which thereafter affords good cause to believe that an impartial trial cannot be had under ground 2 of said section 93-2906, and competent proof is submitted to the court that such cause of impartiality did not exist within the twenty-day period after the last pleading was filed, then the court may entertain a motion to change the place of trial under ground 2 of section 93-2906 within twenty days after that later event occurs.

(iv) With respect to ground 4 of section 93-2906, R. C. M. 1947, the party who disqualifies a district judge, and who desires a change of venue, must include such request in a motion filed along with the affidavit of disqualification. If the party who does not disqualify the district judge desires a change of venue, he shall make such request by motion within 5 days after being served with a copy of the affidavit of disqualification. Unless the parties have agreed in writing upon another district judge, or upon a member of the bar as judge pro tempore, the disqualified district judge must either call in another district judge within fifteen days after filing of the affidavit of disqualification, or ten days after filing of the motion for change of venue, or, if no other judge is called in, grant the motion for change of venue. If any other qualified district judge shall be called in, as herein provided, and shall, within thirty days after the motion for change of venue has been filed, appear and assume jurisdiction of the cause and of all matters and proceedings therein, no change of the place of trial shall be made. If the other qualified district judge called in, as herein provided, fails to appear and assume jurisdiction within thirty days after the motion for change of venue has been filed, then the disqualified judge must immediately grant the motion and order a change in the place of trial to some other county.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The 1965 amendment renumbered some of the numbered clauses in the first sentence and added subdivisions (i) to (iv). See Commission Note below.

The amendment of September 29, 1967, in the introductory paragraph, substituted "a party under Rule 19" for "an indispensable party" in item (7); and, in the fourth sentence, substituted "the" for "that" before "claim for relief."

Commission Note to 1965 Amendment

The numbering of the defenses which may be made by motion is changed to conform to that of the Federal Rule, which results in there being no "(3)" because "improper venue" as a ground for motion to dismiss was deleted in 1963. Subdivisions (i), (ii), (iii), and (iv) are added to clarify and detail the time and manner for motions for change of place of trial in the cases specified in Section 93-2906, R. C. M. 1947.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(b), as amended 1966.

Explanation of change: The terminology is changed to accord with the amendment of Rule 19. The numbering of listed defenses of the Montana Rule is retained: "(3) improper venue" is omitted; and the provisions of subdivisions (i), (ii), (iii) and (iv), dealing with motions for change of place of trial, remain unchanged.

Failure to State a Claim

Where contract for sale of real property contained statements that time was of the essence and that payments could be made on or before January 15 of each year, action for breach of contract by vendor against vendee for making accelerated payments was improperly dismissed for failure to state a claim, since the words of the contract were ambiguous and it did not appear as a certainty that plaintiff was entitled to no relief. *Kielmann v. Morgan*, 156 M 230, 478 P 2d 275.

Complaint against county sheriff and four deputies and county attorneys and two deputies for damages arising out of

plaintiff's arrest, search of plaintiff's store, and plaintiff's public trial did not state claim upon which relief could be granted since public officers are immune from civil liability for their official acts and complaint did not allege defendants were acting outside their capacity as public officers or in excess of their authority. *Wheeler v. Moe*, — M —, 515 P 2d 679.

Hearing on Lack of Jurisdiction

Dismissal of tort action for lack of jurisdiction was premature without full hearing and cross-examination on defendant's motion under Rule 12(b)(2), where complaint alleged that corporate defendant had agent in Montana but answer of nonresident corporation stated that corporation had no "representative resident" in Montana, but also stated that "orders received from dealers in Montana are accepted in Indiana." *Harrington v. Holiday Rambler Corp.*, — M —, 525 P 2d 556.

Involuntary Dismissal

Rule 41(b), providing for involuntary dismissal which operates as an adjudication upon the merits, has no application to a motion to dismiss for failure to state a claim under this rule. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 750.

Motion to Dismiss

A motion to dismiss under this rule is equivalent to a demurrer under former procedure. *Payne v. Mountain States*

Telephone and Telegraph Co., 142 M 406, 385 P 2d 100; *Holtz v. Babcock*, 143 M 341, 389 P 2d 869, 390 P 2d 801; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

While a motion to dismiss for failure to state a claim on which relief can be granted is the same as a demurrer under former Montana procedure and therefore admits to all facts well pleaded, it does not admit to controversial conclusions of law or to the accuracy of alleged construction of written instruments set forth in the pleading. *Holtz v. Babcock*, 143 M 341, 389 P 2d 869, 390 P 2d 801.

An order sustaining a motion to dismiss is not appealable. *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

A motion to dismiss was proper under this rule where return was made more than three years after commencement of action in violation of Rule 41(e), and lack of jurisdiction did not have to be pleaded as an affirmative defense. *Whitcraft v. Semenza*, 145 M 94, 399 P 2d 757.

Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under this rule, the judgment was not res judicata as to a second amended complaint under the provisions of Rule 56(c) treating motion as a summary judgment where matters outside the pleadings were presented to and not excluded by the court. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 749.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

(d) PRELIMINARY HEARINGS. The defenses specifically enumerated (1) [to] (7) in subdivision (b) of this rule whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until trial.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The compiler inserted the bracketed "to" near the beginning of this subdivision.

Amendments

The amendment of September 29, 1967

substituted "(7)" for "(6)" and deleted "the" before "trial" at the end of the section.

Advisory Committee's Note to September 29, 1967 Amendment

Explanation of change: "(7)" has been substituted for "(6)" to correct misnumbering and conform to the defenses enumerated in subdivision (b) [Rule 12(b)].

(g) **CONSOLIDATION OF DEFENSES IN MOTION.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in the first sentence, substituted "any" for "the" before "other motions"; in the second sentence, substituted "but omits therefrom any defense or objection" for "and does not include therein all defenses and objections" and "on the defense or objection" for "on any of the defenses or objections"; inserted "a motion" after "except"; and substituted "subdivision (h)(2) * * * there stated" for "subdivision (h) of this rule."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(g) and (h), as amended 1966.

Explanation of change: Where a dilatory defense is omitted from a preanswer motion, under the language of these subdivisions [Rule 12(g) and 12(h)] the cases are divided on the question of whether the defense can be included in the answer although it is not permitted in another motion. This amendment prevents the inclusion of such omitted defenses in the answer as well as in another preanswer motion. This change follows the provisions of the federal amendment, except that "improper venue" is not included in the enumeration in (h)(1)(A), because the times for making motions for a change of venue are specified in subdivisions (b)(ii), (iii) and (iv) of the Montana Rule [12(b)].

The substance of subdivision (g) has not been changed.

(h) **WAIVER OR PRESERVATION OF CERTAIN DEFENSES.**

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule, dividing it into three subdivisions. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(g) and (h), as amended 1966.

Explanation of change: See Advisory Committee's Note under Rule 12(g).

Lack of Jurisdiction

Defendant who did not plead lack of jurisdiction over the person in his initial

response to complaint was precluded from making subsequent motion on the omitted defense under subsection (g) and

he thereby waived the defense under provisions of this subsection. *Prentice Lumber Co. v. Spahn*, 156 M 68, 474 P 2d 141.

Rule 13. Counterclaim and cross-claim.

(g) CROSS-CLAIM AGAINST COPARTY.

Failure to File

Employer's insurer who paid judgment entered against employer and employee in automobile accident case did not lose its right of indemnity against employee

by employer's failure to file cross-claim in accident action. *St. Paul Fire & Marine Ins. Co. v. Thompson*, 152 M 396, 451 P 2d 98.

DECISIONS UNDER FORMER LAW

Parties to Cross-claim

District court did not have jurisdiction and power to adjudicate mechanics' liens of cross-complainants, materialmen, where

they failed to serve the principal contractor with process. *Greene Plumbing & Heating Co. v. Morris*, 144 M 234, 395 P 2d 252, 256.

(h) JOINDER OF ADDITIONAL PARTIES. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

History: En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 13(h), as amended 1966.

Explanation of change: The amendment to Rule 13(h) incorporates by direct reference the revised criteria and procedures

of Rule 19, as amended. The amendment also expressly refers to Rule 20 thus correcting an existing inadequacy by calling attention to the fact that a party pleading a counterclaim or a cross-claim may join additional persons when the conditions for permissive joinder of parties under Rule 20 are satisfied. Hereafter, for the purpose of determining who must or may be joined as additional parties to a counterclaim or cross-claim, the party pleading the claim is to be regarded as a plaintiff and the additional parties as plaintiffs or defendants as the case may be, and amended Rules 19 and 20 are to be applied in the usual fashion.

Rule 14. Third-party practice.

(a) WHEN DEFENDANT MAY BRING IN THIRD PARTY.

"Cross-claim" against Nonparties

Rules of Civil Procedure do not permit nor even contemplate a cross-claim against a person or entity which is not a party; such a "cross-claim" cannot be converted into a third-party claim under this rule where neither allegations nor relief sought could be stretched to state that nonparties might be liable to defendant for all or part of plaintiff's claim against him. *Campanella v. Bouma*, — M —, 520 P 2d 1073.

Insurance Coverage

Federal court dismissed action for declaratory judgment declaring obligations of casualty insurance company under an automobile casualty insurance policy which had allegedly been canceled prior to the time of the accident involving the automobile of the insured sued for in-

juries resulting from the accident, since the issues which did not involve federal law, could be solved in the state court wherein third-party complaint under this rule had been filed by the insured against the insurer in which the insured sought to hold the insurer to the terms of the policy, where the state court could dispose of the coverage problems first under M. R. Civ. P., Rule 42(b). *Western Casualty & Surety Co. v. Pinson*, 255 F Supp 624, 625.

Separate Trial of Third Party Action

Third party claim initiated by hospital, which was being sued by minor patient burned by defective television switch while in hospital, against lessor of television equipment should have been separated from main action between hospital and

patient and tried separately. *Crosby v. Billings Deaconess Hospital*, 149 M 314, 426 P 2d 217.

References

Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

Rule 15. Amended and supplemental pleadings.

(a) AMENDMENTS.

Discretionary Power of Court

Where it was very clear that the supreme court, upon a former appeal of the same case, was unanimous in its decision to affirm the jury verdict and as to the ineffectiveness of additur order, the fact that the supreme court affirmed the jury verdict and thereby finally determined the amount of the award withdrew any discretion that might have been otherwise possessed by the trial judge to allow amendments to the pleadings. State acting by and through State Highway Commission v. Schmidt, 148 M 316, 420 P 2d 153, 155.

Trial court's discretionary power to grant leave to amend pleadings may be limited by a decision of the supreme court upon a former appeal of the same case. State acting by and through State Highway Commission v. Schmidt, 148 M 316, 420 P 2d 153, 155.

A proposed second amended complaint which sought to substitute an indebtedness on account of goods sold and delivered for indebtedness on a default judgment covering substantially the same account because the judgment had been set aside, and which attempted to hold the directors personally liable for the debts of a corporation by reason of their failure to file an annual statement, was properly refused by the trial court where the

evidence indicated bad faith in that the vacated default judgment was taken without the knowledge of the president or directors of the corporation and in that the course of dealings with the president of the corporation was withheld from the directors of the subject corporation. *Prentice Lumber Co. v. Hukill*, 161 M 8, 504 P 2d 277.

Right to Amendment of Course

The motion to dismiss for failure to state a claim is not a responsive pleading within the provisions of this rule that complaint may be amended once as a matter of course before a responsive pleading is served. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 748.

Timeliness

Granting plaintiff's motion to amend complaint to include theory of implied warranty of fitness for a particular purpose was error where motion was presented shortly before trial and plaintiff had relied upon theory of negligence through the entire course of the pre-trial proceedings; warranty theory was foreign to the proper pleading of the case and required defendant to be prepared for an entirely different defense theory. *McGuire v. Nelson*, — M —, 508 P 2d 558.

(b) AMENDMENTS TO CONFORM TO THE EVIDENCE.

Jury Instructions

Although this rule has been liberally applied in favor of allowing amendment of pleadings to conform to the evidence, where a change in the theory of liability from negligence to breach of contract caused the trial court to submit to the jury instructions based on both theories, which instructions when read as a whole were conflicting, inconsistent and confusing, trial court erred in denying motion for new trial. *Brothers v. Surplus*

Tractor Parts Corp., 161 M 412, 506 P 2d 1362.

Notice of Claim

Where plaintiff failed to plead claim for deficiency judgment on balance remaining after sale of repossessed vehicles, the pleadings could not later be amended to conform to evidence that would have supported a deficiency judgment. *Gallatin Trust & Savings Bank v. Darrah*, 152 M 256, 448 P 2d 734.

(c) RELATION BACK OF AMENDMENTS. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the

party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The requirements of clauses (1) and (2) hereof are satisfied with respect to any city, village, town, school district, county, or public agency, board or officer of such public bodies, and with respect to the state or any state board, agency or officer thereof, to be brought into the action as defendant, if process is served as provided by Rule 4D(2)(g) and (h) for service upon such defendant.

History: En. Sec. 15, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 added the last sentence of the first paragraph and added the second paragraph.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 15(c), as amended 1966.

Explanation of change: This amendment is designed to avoid problems which have arisen in instances in which the complaint named the wrong defendant and the statute of limitations expired prior to an amendment correcting the error. Where the newly named defendant received notice of the action and knew or should have known that he was the intended defendant, it seems unjust to prohibit relation back.

The most serious difficulties under the Federal Rules have been in suits against

the United States or an agency or officer thereof. The second paragraph of the federal amendment contains specific provisions for such cases and the second paragraph of this amendment adapts the federal provision to suits where the true defendant is the state or a political subdivision thereof.

The change will also further the objective of the provision of Rule 25(d) for automatic substitution of the successor public officer.

Amendment after Running of Limitations

If original complaint is timely filed, amended complaint dealing with same transaction set out in original complaint will relate back to original complaint, even though amended complaint changes legal theory of action, adds claim arising out of same transaction or states facts more specifically, and even though amended complaint is filed after running of statute of limitations. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

(d) SUPPLEMENTAL PLEADINGS.

Notice

Trial court was justified in refusing to grant defendants' motion to amend their answer by adding an affirmative defense of compromise and settlement, even though it was represented that some

sort of compromise settlement had been reached after filing of complaint and answer, since defendants had not given plaintiffs notice of this motion as required by this section. *Montgomery v. Gehring*, 145 M 278, 400 P 2d 403.

Rule 16. Pretrial procedure—Formulating issues.

Discretion of Court

Pretrial procedure is optional, it being left to trial court's discretion whether to utilize procedure and to what extent. *Lenz v. Mehrens*, 149 M 394, 427 P 2d 297.

Issues on Appeal

Issues of waiver and breach of contract not covered by pretrial order could not be raised on appeal. *Davis v. Davis*, 159 M 355, 497 P 2d 315.

IV. PARTIES

Rule 17. Parties plaintiff and defendant—Capacity.

18. Joinder of claims and remedies.

19. Joinder of persons needed for just adjudication.

- 20. Permissive joinder of parties.
- 23. Class actions.
- 23.1. Derivative actions by shareholders.
- 23.2. Actions relating to unincorporated associations.
- 24. Intervention.

Rule 17. Parties plaintiff and defendant—Capacity.

(a) **REAL PARTY IN INTEREST.** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state of Montana so provides, an action for the use or benefit of another shall be brought in the name of the state of Montana. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

History: En. Sec. 17, Ch. 13. L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 deleted the conjunction "but" between the present first and second sentences and made them separate sentences; and added the third sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 17(a), as amended 1966.

A bailee is added to the list of real parties in interest; and a minor change is made in the text to make it clear that the specific instances enumerated are not exceptions to, but illustrations of, the rule, and carry no negative implications.

The provision that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after the objection has been raised, for ratification, etc., keeps pace with modern decisions which, in the interests of justice, are inclined to be lenient when an honest mistake has been made in choosing the party in whose name the action is filed.

Assignee for Collection

Assignees of claim paid by their liability insurer were real parties in interest and entitled to sue their indemnitor and its insurer in their own names because the assignees had legal title to the claim and this was sufficient to constitute the assignees the real parties in interest. *Washington Water Power Co. v. Morgan Electric Co.*, 152 M 126, 448 P 2d 683.

Joinder of Insurance Company

In action for damages defendant was entitled to compel joinder of insurance company, which had paid most of plaintiff's losses, as the real party in interest, notwithstanding the collateral source rule. *State ex rel. Slovak v. District Court*, — M —, 534 P 2d 850.

Oral Gift

Son was not real party in interest in action on stated account, based on oral gift to son, where buyer of goods was never aware that son was owner but dealt entirely through father. *Hanlon v. Anderson*, 160 M 279, 502 P 2d 51.

References

State ex rel. Farmers Elevator Co. of Reserve v. District Court, 147 M 72, 410 P 2d 160.

Rule 18. Joinder of claims and remedies.

(a) **JOINDER OF CLAIMS.** A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims

either legal or equitable or both as he has against an opposing party or co-party.

History: En. Sec. 18, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 18(a), as amended 1966.

Explanation of change: Under the prior rule some courts have inferred that the standards of Rules 19, 20, and 22 relate to and limit Rule 18(a) in multiple party cases. Thus, Rule 20(a) resulted in a holding that, unless each claim arose from a single transaction or series of transactions and involved a question common to all defendants, there could be no joinder. Federal Housing Admr. v. Christianson, 26 F Supp 419 (D. Conn. 1939). This amendment is designed to overcome such decisions and to state clearly that a party asserting a claim (original claim, counterclaim, cross-claim, third party claim) may join as many claims as he has against an opposing party regardless of the fact that there are multiple parties. The joinder is subject to the court's power to direct appropriate procedure for trying the claims. See Rules 42(b), 20(b), 21. Joinder of parties is governed by other rules operating independently.

In addition to the changes in the Federal Rules the words "or co-party" are added to the Montana amendment for

consistency with the provisions of this amendment for cross-claims and Rule 13(g).

Divorce Proceedings

Where wife brought suit for divorce and husband filed cross complaint for adjudication of his right to property acquired by their joint effort, the general equity powers of the court were properly invoked by joining in a single action the prayer for divorce and adjudication of the dispute between the parties concerning property rights. *Tolson v. Tolson*, 145 M 87, 399 P 2d 754, explained in 157 M 252, 257, 484 P 2d 748.

In divorce proceedings, jointly held property may be partitioned by the district court, which has the power to settle and to adjust property jointly accumulated, regardless of whether the pleadings contain a specific prayer for partition. *Hodgson v. Hodgson*, 156 M 469, 482 P 2d 140.

In a divorce action a district court may completely divest the wife of her interest in property, no matter how it is held, and provide for the payment of alimony in lieu thereof; no particular pleading is required to raise question of equitable division of property; any pleading is sufficient which gives notice of pleader's intent to raise the issue; specific relief need not be requested. *Libra v. Libra*, 157 M 252, 484 P 2d 748, overruling *Emery v. Emery*, 122 M 201, 200 P 2d 251 and affirming rule of *Johnson v. Johnson*, 137 M 11, 349 P 2d 310.

DECISIONS UNDER FORMER LAW

Assignor Bringing Action

Assignee of one-half interest of an overriding royalty agreement with plaintiff-assignor and defendant could not be joined as a party plaintiff in a suit to

compel defendant to pay the other half interest to plaintiff whether assignor was a trustee for the assignee or they were tenants in common. *Lowe & Lynn v. Flank Oil Co.*, 144 M 499, 398 P 2d 608.

Rule 19. Joinder of persons needed for just adjudication.

(a) **PERSONS TO BE JOINED IF FEASIBLE.** A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or,

in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: This is a substitution for existing Rule 19 in its entirety. The changes are intended to make clear that whenever feasible the persons materially interested in the subject of an action should be joined as parties so that they may be heard and a complete disposition made. When this comprehensive joinder cannot be accomplished the case should be examined pragmatically and a choice made between the alternatives of proceeding with the action in the absence of particular interested persons, and dismissing the action.

Even if the court is mistaken in its decision to proceed in the absence of an interested person, it does not by that token deprive itself of the power to adjudicate as between the parties already before it through proper service of process. But the court can make a legally binding adjudication only between the parties actually joined in the action. It is true that an adjudication between the parties before the court may on occasion adversely affect the absent person as a practical matter, or leave a party exposed to a later inconsistent recovery by the absent person. These are factors which should be considered in deciding whether the action should proceed, or should rather be dismissed;

but they do not themselves negate the court's power to adjudicate as between the parties who have been joined.

The change straightens out difficulties in the wording of the old rule. The word "indispensable" is used only in a conclusory sense, that is, a person is "regarded as indispensable" when he cannot be made a party and, upon consideration of the factors mentioned in subdivision (b), it is determined that in his absence it would be preferable to dismiss the action, rather than to retain it. The factors mentioned in subdivision (b) of the rule are not intended to be exclusive and others may be applicable in particular situations. The court is to determine whether in equity and good conscience the action should proceed among the parties already before it, or should be dismissed.

Injured Party in Dispute between Insurers

Party who brought original action for injuries but who was not party to either of policies of insurance involved and was only indirectly interested in outcome of litigation between two insurance companies was improper party in declaratory action to determine which of two insurance companies was liable. *National Farmers Union Property & Casualty Co. v. General Guaranty Ins. Co.*, 150 M 297, 434 P 2d 708.

Joinder of Party to Prior Action

Stipulation of owner of bulldozer to be bound by prior judgment even though not a party to previous action precluded subsequent complaint for damages to bulldozer, and there was no need to join him as a party to the previous action. *Morris v. McCarthy*, 159 M 236, 497 P 2d 102.

(b) **DETERMINATION BY COURT OF WHENEVER JOINDER NOT FEASIBLE.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

(c) **PLEADING REASONS FOR NONJOINER.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

(d) **EXCEPTION OF CLASS ACTIONS.** This rule is subject to the provisions of Rule 23.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote Rule 19 in general and added Rule 19(d) as a separate subdivision of the rule.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

Rule 20. Permissive joinder of parties.

(a) **PERMISSIVE JOINER.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

History: En. Sec. 20, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 substituted "these persons" for "of them" near the end of the first sentence; and "defendants" for "of them" near the end of the second sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 20(a), as amended 1966.

This amendment fits into the amendment to Rule 18, and clarifies the antecedent of the word "them."

Scope

The scope of this rule is procedural in

nature and removes obstacles to joinder without affecting the substantive rights of the parties, so that in a suit by real estate agents against buyer and seller, judgment for plaintiff would not, in effect, make the buyer a party to a prior contract between the agents and the seller. *Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

(b) SEPARATE TRIALS.

Disqualification of Judge

Disqualification of trial judge did not make his previous order denying a severance of action against multiple defendants either *res judicata* or the law of the case,

Surety Bond

Action was properly brought against surety for enforcement of obligation on bond without joinder of principal. *Morgen & Oswood Constr. v. United States Fidelity & Guaranty Co.*, — M —, 535 P 2d 170.

and successor district judge could order severance on a new motion. *State ex rel. Stenberg v. Nelson*, 157 M 310, 486 P 2d 870.

Rule 21. Misjoinder and nonjoinder of parties.

References

Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

Rule 23. Class actions.

(a) **PREREQUISITES TO A CLASS ACTION.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 revised Rule 23 in general and rewrote Rule 23(a) in particular. For text of former Rule 23(a), see parent volume.

Taxpayers

Affected taxpayers had standing under this rule to ask for declaratory judgment against boards of county commissioners which increased appraisals on ground that state board of equalization used wrong rates in assessing timberlands. *State ex rel. Conrad v. Managhan*, 157 M 335, 485 P 2d 948.

(b) **CLASS ACTIONS MAINTAINABLE.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition: (1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to

the class as a whole; or (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 re-wrote Rule 23 generally. For text of former Rule 23(b), "Secondary Action By Shareholders," see parent volume, and see Rule 23.1, "Derivative Actions By Shareholders" in this supplement.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 23, as amended 1966.

Explanation of change: The amended

rule describes in more practical terms than existed under the old rule the occasions for maintaining class actions; provides that all actions maintained to the end as such will result in judgments including those whom the court finds to be members of the class, whether or not the judgment is favorable to the class; and refers to the measures which can be taken to assure the fair conduct of these actions. It is designed to clear up difficulties in drawing distinctions between joint, common, secondary or several rights, and in defining categories in terms of "true," "hybrid," and "spurious," and to give a better guide to the extent and binding effect of judgments.

(c) DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED—NOTICE—JUDGMENT—ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 re-wrote Rule 23 generally. Former Rule 23(c), "Dismissed On Compromise," was somewhat similar to present Rule 23(e). For text of former rules, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 23, as amended 1966.

Explanation of change: In order to avoid the necessity for awaiting final judgment before obtaining review by the supreme court of an order under subdivision

(c)(1) refusing to permit a class action to be maintained as such, Rule (1)(b) of the Montana Rules of Appellate Civil Procedure is amended to make such an order appealable. There does not seem to be a corresponding necessity for direct appeal, as distinct from appeal from the final judgment, where the court determines that the action may be maintained as a class action.

Supervisory Writ

Defendants were not entitled to a supervisory writ against trial court's ruling that action could be maintained as a class action; under subdivision (d) trial court could alter or amend its order as the litigation progresses. State ex rel. Anaconda Aluminum Co. v. District Court, 158 M 228, 490 P 2d 351.

(d) ORDER IN CONDUCT OF ACTIONS. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 re-wrote Rule 23 generally. For text of former Rule 23(d), "Orders To Ensure Adequate Representation," see parent volume.

(e) DISMISSAL OR COMPROMISE. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 re-

wrote Rule 23 generally and added Rules 23(e) and 23(f). For text of former Rule 23(c), "Dismissal or Compromise," see parent volume.

(f) **SECURITY FOR COSTS.** Security for costs and charges, which may be awarded against a representative party, may be required by an opposing party. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the representative party by judgment, or in the progress of the action, not exceeding the sum of one thousand dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 rewrote Rule 23 generally and added Rules 23(c) and 23(f).

Advisory Committee's Note to September 29, 1967 Amendment

Explanation of change: In addition to the changes of the Federal Rule [23], subdivision (f) is added to the Montana Rules in order to afford protection against selection of a representative party who may not be responsible for costs and charges.

Rule 23.1. Derivative actions by shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 23.1, as adopted 1966.

Explanation of change: A derivative action by a shareholder of a corporation or by a member of an unincorporated association has distinctive aspects which require the special provisions set forth in the new rule. The next-to-the-last sentence recognizes that the question of adequacy of representation may arise when the plaintiff is one of a group of shareholders or members.

The court has inherent power to provide for the conduct of the proceedings in a derivative action, including the power to determine the course of the proceedings

and require that any appropriate notice be given to shareholders or members.

The Montana amendment conforms to the 1966 federal amendment, except that it omits the federal provision that the complaint be verified and allege "(1) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have." No reason is apparent for requiring a verified complaint in this type of action and not in others, and the allegations required by the federal amendment and omitted from this proposal appear to be designed to prevent abuse of federal jurisdiction and to be unnecessary in state practice.

Rule 23.2. Actions relating to unincorporated associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 23.2, as adopted 1966.

Explanation of change: Although an action by or against representatives of the membership of an unincorporated associ-

ation has often been viewed as a class action, the real or main purpose of this characterization has been to give "entity treatment" to the association when for formal reasons it cannot sue or be sued as a jural person under Rule 17. Rule 23.2 deals separately with these actions, referring where appropriate to Rule 23.

Rule 24. Intervention.

(a) **INTERVENTION OF RIGHT.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

History: En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote item (2), substituting it for former items (2) and (3), allowing intervention when representation of applicant's interest might be inadequate and he might be bound by judgment and when applicant would be adversely affected by court's disposition of property.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 24(a), as amended 1966.

Explanation of change: Subdivision (2) is changed because a class member who claims that his "representative" does not adequately represent him, and is able to establish that proposition with sufficient probability, should not, as was required under the prior rule, be put to the risk of having a judgment entered in the action which by its terms extends to him, and be obliged to test the validity of the judgment as applied to his interest by a later collateral attack. Rather he should, as general rule, be entitled to intervene in the action.

The amendment provides that an applicant is entitled to intervene in an action when his position is comparable to that of a person under Rule 19(a)(2)(i), as amended, unless his interest is already adequately represented in the action by existing parties. The Rule 19(a)(2)(i) criterion imports practical consideration, and the deletion of the "bound" language similarly frees the rule from undue preoccupation with strict considerations of res judicata.

The representation whose adequacy comes into question under the amended rule is not confined to formal representation like that provided by a trustee for his beneficiary or a representative party in a class action for a member of the class. A party to an action may provide practical representation to the absentee seeking intervention although no formal relationship exists between them, and the adequacy of this practical representation will then have to be weighed.

Subdivision (3) is deleted for if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene, and his right to do so should not depend on whether there is a fund to be distributed or otherwise disposed of as was required under that

subdivision. Intervention of right is here seen to be a kind of counterpart to Rule 19(a)(2)(i) on joinder of persons needed for a just adjudication: where, upon motion of a party in an action, an absentee should be joined so that he may protect

his interest which as a practical matter may be substantially impaired by the disposition of the action, he ought to have a right to intervene in the action on his own motion.

(c) **PROCEDURE.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene. When the constitutionality of an act of the legislative assembly affecting the public interest is drawn in question in any action to which neither the state nor any agency or officer thereof is a party, the court shall notify the attorney general of the state and the attorney general may within 20 days thereafter intervene in the same manner on behalf of the state.

History: En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in the first sentence, substituted "the" for "all" before "parties" and "as provided in Rule 5" for "affected thereby" after "parties."

Rule 25. Substitution of parties.

(a) DEATH.

Waiver of Substitution Requirements

Failure of plaintiff to substitute executrix of doctor's estate for doctor, in tort action initiated against doctor before his death was waived where attorneys for doctor were also attorneys for executrix,

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 24(a), as amended 1963.

Explanation of change: This amendment conforms to the amendment of Rule 5(a). See note to that amendment.

attorneys and executrix were present at trial of action and attorneys for executrix had filed motion for additional time in which to perfect appeal from judgment against doctor. *Nagaard v. Feda*, 149 M 190, 425 P 2d 79.

V. DEPOSITIONS AND DISCOVERY

Rule 26. Depositions pending action.

28. Persons before whom depositions may be taken.
30. Depositions upon oral examination.
33. Interrogatories to parties.
35. Physical and mental examination of persons.

Rule 26. Depositions pending action.

(b) SCOPE OF EXAMINATION.

Identity of Witnesses

The identity of a traffic engineer who will testify in a collision case involving a question of concurrent negligence is discoverable under this rule. *Smith v. Babcock*, 157 M 81, 482 P 2d 1014.

unrelated to main inquiry of lawfulness or reasonableness of rates, and such information was thus privileged and not relevant under this rule. *Public Service Comm. of Montana v. District Court*, — M —, 511 P 2d 334.

Interrogatories

Interrogatories by rate protestors to Public Service Commission, seeking information as to amounts, values, costs, and details of parts of property, were

Unreasonable Requests

In action by insured against insurance company seeking damages for breach of contract and punitive damages for violations of the insurance code, trial court

abused discretion in ordering answer to interrogatory requesting names and addresses of all persons within the state who had made a claim against the insurance company and whose claims the insurance company had either refused to pay or had not paid in full during the last three years; even if relevant and material to issues pleaded, the interrogatory was unreasonable since the value of the infor-

mation sought did not bear a reasonable relationship to the annoyance and expense involved in answering the interrogatory. State ex rel. Bankers Life & Casualty Co. v. Miller, 160 M 256, 502 P 2d 27.

References

State ex rel. State Highway Commission v. District Court, 147 M 348, 412 P 2d 832.

(e) **OBJECTIONS TO ADMISSIBILITY.** Subject to the provisions of Rules 28(b) and 32(c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

History: En. Sec. 26, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 inserted reference to Rule 28(b) and "the" after "require the exclusion of."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 26(e), as amended 1963.

Explanation of change: This amendment conforms to the amendment of Rule 28(b).

Rule 28. Persons before whom depositions may be taken.

(b) **IN FOREIGN COUNTRIES.** In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to letter rogatory. A commission or a letter rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these Rules.

History: En. Sec. 28, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 deleted "state or" after "In a foreign"; substituted "may" for "shall" after "depositories"; and rewrote the remainder of the Rule. For text of former Rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 28(b), as amended 1963.

Explanation of change: The amendment of clause (1) is designed to facilitate depositions in foreign countries by enlarging the class of persons before whom the depositions may be taken on notice.

It makes clear that the appointment of a person by commission in itself confers

power upon him to administer any necessary oath.

It negates the judicial requirement sometimes stated that letters rogatory will not issue unless the use of a notice or commission is shown to be impossible or impractical. It permits a sound choice between depositions under a letter rogatory and on notice or by commission in the light of all the circumstances.

In executing a letter rogatory the courts of other countries may be expected

to follow their customary procedure for taking testimony. The last sentence of the amended subdivision provides, contrary to the implications of some authority, that evidence recorded in such a fashion need not be excluded on that account. Whether or to what degree the value or weight of the evidence may be affected by the method of taking or recording the testimony is left for determination according to the circumstances of the particular case.

(e) **DEPOSITION TO BE TAKEN IN SISTER STATES AND FOREIGN COUNTRIES FOR USE IN THIS STATE.** Whenever the deposition of any person is to be taken in a sister state or a foreign country, or any other jurisdiction, foreign or domestic, for use in this state, pursuant either to notice or stipulation, the Clerk or equivalent officer of any Court having jurisdiction at the place where the witness is to be served or the deposition taken, upon proof that notice has been duly served for taking of the deposition or that the parties have stipulated to such taking, may issue the necessary subpoenas or equivalent court instruments to require such witness to attend for the taking of the deposition at the time and place in the sister state or foreign country, or any other jurisdiction, foreign or domestic, designated in the notice or stipulation.

History: En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

Advisory Committee's Note

Officials in some sister states have in-

sisted upon some specific authorization for the issuance of subpoenas by them for use in Montana litigation. The amendment provides that authority.

Rule 30. Depositions upon oral examination.

(b) ORDERS FOR THE PROTECTION OF PARTIES AND DEPONENTS.

Attorney and Client

Protective relief was granted to strike from an amended complaint quotations and purported quotations from legal opinions prepared by defendant's attorneys for defendant and turned over to plaintiff's attorney in accordance with in camera inspection ordered by the district court, which provided that the opinions were to be treated as confidential material and were not to be made a part of the court record or otherwise disclosed to other persons. *State ex rel. Union Oil Co. of California v. District Court*, 160 M 229, 503 P 2d 1008.

Limitation of Examination

In a libel action it was not error for the trial judge to issue a minute entry order refusing to require the defendant to answer questions submitted by the plaintiff as the court has the power to limit the examination and protect him from annoyance, embarrassment or oppression. *Steffes v. Crawford*, 143 M 43, 386 P 2d 842.

References

State ex rel. State Highway Commission v. District Court, 147 M 348, 412 P 2d 832.

(f) **CERTIFICATION AND FILING BY OFFICER—COPIES—NOTICE OF FILING.** (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file

it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in clause (1), inserted "as certified" before "mail to the clerk" in the last sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 30(f), as amended 1963.

This proposal is patterned after the 1963

federal amendment, and conforms to provisions of Rule 4 which permit the use of certified mail as an alternative to the use of registered mail.

Failure to File

Failure of court reporter to file original copies of depositions in accordance with this rule was at most harmless error where there was ample time to discover this fact and no objection was made. *Mustang Beverage Co., Inc. v. Jos. Schlitz Brewing Co.*, — M —, 511 P 2d 1.

Rule 33. Interrogatories to parties.

Any party may serve upon any adverse party, who has been served with process or who has appeared, written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A party serving interrogatories upon an adverse party shall file the same in the court in which the action is pending. The interrogatories shall be answered separately and fully in writing under oath. The party answering the interrogatories shall set forth a verbatim re-copy of each of the interrogatories, followed by the answer thereto, and shall file the answers in the court in which the action is pending. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served for answer shall serve a copy of the answers upon every party who has made written appearance within 20 days after the service of interrogatories upon him, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 20 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

History: En. Sec. 33, Ch. 13, L. 1961; eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, Nov. 28, 1966, eff. Jan. 1, 1967.

Amendments

The amendment of April 1, 1965 added a third paragraph which read: "A party desiring to serve interrogatories upon an adverse party shall file and serve a copy thereof upon every other party. The party answering the interrogatories shall file the answers in the court in which the action is pending and serve a copy thereof upon every other party."

The amendment of November 28, 1966, in the first paragraph, inserted the second and fourth sentences and substituted "for answer shall serve a copy of the answers upon every party who has made a written appearance" for "shall serve a copy of the answers on the party submitting the interrogatories" in the fifth sentence; and deleted the paragraph added in 1965.

Commission Note to 1965 Amendment

This amendment is consistent with Rule 5. The requirement of service of interrogatories and answers upon all other parties to the litigation may save other parties additional time and effort in duplication of interrogatories resultant from lack of knowledge of what other parties have done. The requirement of filing of answers makes them available to judges who may want to see them.

Commission Note to 1966 Amendment

To put the interrogatories and answers into one document for convenience of use, and to remove any obstacle to the service of interrogatories which may result from the requirement of service upon "every other party."

Identity of Witnesses

Failure to identify witnesses in response to specific interrogatories substantially affected rights of party, entitling him to a new trial. *Sanders v. Mount*

Haggin Livestock Co., 160 M 73, 500 P 2d 397.

Public Service Rate Protest

Rate protestors' interrogatories to Public Service Commission seeking amounts, values, costs, and details of parts of property, were irrelevant to main inquiry of "lawfulness" or "reasonableness" of rates. *Public Service Comm. of Montana v. District Court*, — M —, 511 P 2d 334.

Scope

Although this section should be liberally construed to make all relevant facts available to parties in advance of trial and to reduce the possibilities of surprise and unfair advantage, it cannot become a weapon for punishment or forfeiture, or an instrument for the avoidance of a trial on the merits. *Wolfe v. Northern Pacific Ry. Co.*, 147 M 29, 409 P 2d 528.

Unreasonable Requests

In action by insured against insurance company seeking damages for breach of contract and punitive damages for alleged violations of the insurance code, trial court abused its discretion by ordering answer to interrogatory requesting names and addresses of all persons within the state of Montana who had made a claim against the insurance company and whose claims the insurance company had either refused to pay or had not paid in full during the last three years; even if relevant material to issues pleaded, the interrogatory was unreasonable since the value of the information sought did not bear a reasonable relationship to the annoyance and expense involved in answering the interrogatory. *State ex rel. Bankers Life & Casualty Co. v. Miller*, 160 M 256, 502 P 2d 27.

Rule 34. Discovery and production of documents and things, etc.**Inspection of Land**

State's motion for inspection to drill wells on condemnee's property should have been allowed. *State ex rel. State Highway Commission v. District Court*, 147 M 348, 412 P 2d 832.

Real Estate Appraisals

In proceeding to condemn strip of land in front of leased building, highway commission could not be compelled by lessee to produce appraisals containing no opinion as to damages to, or value of, leasehold. *State Highway Commission v. District Court*, 149 M 384, 427 P 2d 49.

Rule 35. Physical and mental examination of persons.

(b) REPORT OF FINDINGS. (1). * * * [Same as parent volume.]

(2) Waiver of Privilege. Either by (1) requesting and obtaining a report of the examination ordered as provided herein, or by taking the deposition of the examiner, or by (2) commencing an action or asserting a defense which places in issue the mental or physical condition of a party

to the action, the party examined or a party to the action waives any privilege he may have in that action or any other action involving the same controversy, regarding the testimony of every person who has treated, prescribed, consulted, or examined or may thereafter treat, consult, prescribe or examine, such party in respect to the same mental or physical condition; but such waiver shall not apply to any treatment, consultation, prescription or examination for any mental or physical condition not related to the pending action. Upon motion seasonably made, and upon notice and for good cause shown, the court in which the action is pending, may make an order prohibiting the introduction in evidence of any such portion of the medical record of any person as may not be relevant to the issues in the pending action.

History: En. Sec. 35, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-6, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The amendment of September 29, 1967 rewrote clause (2). For text of former rule, see parent volume.

The 1971 amendment inserted "or asserting a defense" near the beginning of clause (2) of the first sentence of subdivision (b) (2); and substituted "a party to the action" for "the party bringing the action" in two places in the same clause.

Advisory Committee's Note to September 29, 1967 Amendment

This amendment extends the existing modification by Rule 35 of subparagraph

4 of R. C. M. 1947, sec. 93-701-4. The purpose is to facilitate the obtaining of competent medical testimony and the use of testimony of the original attending physician, especially in personal injury cases. The proposal coincides with the view recommended in Wigmore on Evidence (McNaughton rev. 1961), Vol. VIII, secs. 2380 and 2380a.

Physician-Patient Privilege

By filing medical malpractice suit and submitting attending physicians for deposition purposes, patient permanently waived any privilege concerning her eye which was subject matter of suit; order that defense counsel be allowed private conference with physicians was proper. Callahan v. Burton, 157 M 513, 487 P 2d 515.

Rule 36. Admission of facts and of genuineness of documents.

(a) REQUEST FOR ADMISSION.

Answers Filed Late

Trial court did not abuse its discretion in allowing answers to request for admissions to be filed after time limit had expired since filing delay was accidental and no prejudice to requesting party was shown. Heller v. Osburnsen, — M —, 510 P 2d 13.

Where defendants in action for wrongful death stemming from automobile accident failed to answer requests for admissions from plaintiffs over period of 8½ months, with intervening admonition during pretrial conference, there was no abuse of discretion by district court in striking response and deeming requested facts admitted. Morast v. Auble, — M —, 519 P 2d 157.

Central Issues in Controversy

Request for admissions could not be ignored simply because it dealt with central issues which might in good faith be deemed controverted. Morast v. Auble, — M —, 519 P 2d 157.

Construction

The intent of this rule is that the party served shall make a sworn statement of the truth of any relevant matters of fact set forth in the request for admissions. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Discretion of Trial Court

Where defendant failed to file admissions on plaintiff's request and was not permitted to file them later or to reopen hearing on summary judgment, whether defendant's admissions, which were signed and verified by defendant's counsel as being made from a letter received from the defendant, met the intent of this rule was a matter within the discretion of the trial court. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Failure To Answer

In suit by client against his attorney for money which attorney failed to forward to client, request for admissions were deemed admitted where attorney

failed to answer. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

Late Filing of Response

Refusal to permit late filing by plaintiffs of responses to request for admissions in wrongful death action was not an abuse of discretion where there was an eight and a half month delay in filing with an intervening admonition to re-

spond made during pretrial conference and where names of an eyewitness and an investigating highway patrolman had been furnished to plaintiffs through answers to their interrogatories. *Morast v. Auble*, — M —, 519 P 2d 157.

References

Olson v. City-Commission of City of Helena, 146 M 386, 407 P 2d 374.

Rule 37. Refusal to make discovery—Consequences.

(a) REFUSAL TO ANSWER.

Appellate Review

An appellate court will reverse a trial court judge, who has refused to invoke the sanctions of this section, only when his judgment may materially affect the substantial rights of the parties and allow a possible miscarriage of justice. *Wolfe v. Northern Pacific Ry. Co.*, 147 M 29, 409 P 2d 528.

Judge's Discretion

It was not an abuse of discretion for trial judge to allow witness for oil refinery to testify as to condition of ground about railroad tracks where plaintiff-

switchman crushed his hand beneath wheel of oil tank car when he allegedly slipped in oil or grease on concrete walkway of refinery in trying to mount the train, even though railroad had not included witness' name in its answer to plaintiff's interrogatories, since witness was the oil refinery's and plaintiff, knowing oil refinery had been joined as a third-party defendant, had failed to seek disclosure from it, or a pretrial conference, and had allowed other witnesses to testify to the same matter at trial. *Wolfe v. Northern Pacific Ry. Co.*, 147 M 29, 409 P 2d 528.

VI. TRIALS

Rule 41. Dismissal of actions.

43. Evidence.

44. Proof of official record.

44.1. Determination of foreign law.

46. Exceptions unnecessary.

47. Jurors.

50. Motion for a directed verdict and for judgment notwithstanding the verdict.

52. Findings by the court.

Rule 38. Jury trial of right.

(a) RIGHT RESERVED.

Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declara-

tory judgment and there are triable issues of fact. *Mahan v. Hardland*, 147 M 78, 410 P 2d 156.

Rule 39. Trial by jury or by the court.

(c) ADVISORY JURY AND TRIAL BY CONSENT.

New Trial

In an equity action for specific performance tried before an advisory jury, where the court granted defendant's mo-

tion for a new trial, the court was not required to order that the new trial be by jury as had the original proceedings. *Waite v. Waite*, 143 M 248, 389 P 2d 181.

Rule 41. Dismissal of actions.

(a) VOLUNTARY DISMISSAL—EFFECT THEREOF.

Appeal from Dismissal

Order granting motion to dismiss is an appealable order, but the right to appeal is lost after the deadline passes, and can-

not be revived seventeen months later by a motion for appeal and reinstatement of the case. *Beach v. Destination Enterprises, Inc.*, — M —, 526 P 2d 1382.

Dismissal As Affecting Counterclaim

Motion to dismiss complaint was properly granted where counterclaiming defendant did not object to dismissal, where trial was in fact had on defendant's counterclaim and where defendant in fact obtained judgment against plaintiff on coun-

terclaim. *Ratcliff v. Murphy*, 150 M 31, 430 P 2d 627.

References

Vennes v. Nollmeyer, 144 M 43, 394 P 2d 178.

(b) **INVOLUNTARY DISMISSAL—EFFECT THEREOF.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or failure to join a party under Rule 19, operates as an adjudication upon the merits.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 inserted "in an action tried by the court without a jury" before "has completed" in the second sentence and deleted the same phrase from the beginning of the third sentence; and, in the last sentence, substituted "failure to join a party under Rule 19" for "for lack of an indispensable party."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 41(b), as amended 1963 and 1966.

Explanation of change: Under the prior text of the second sentence of this subdivision [Rule 41(b)], the motion for dismissal at the close of the plaintiff's evidence may be made in a case tried to a jury as well as in a case tried without a jury. But when made in a jury-tried case, this motion overlaps the motion for a directed verdict under Rule 50(a), which is also available in the same situation. This overlap has caused confusion. Accordingly it is amended to provide that the motion for dismissal at the close of the plaintiff's evidence shall apply only to nonjury cases (including cases tried with an advisory jury). Hereafter the correct

motion in jury-tried cases would be a motion for a directed verdict. This amendment involves no change of substance.

The first sentence of Rule 41(b), providing for dismissal for failure to prosecute or to comply with the Rules or any order of court, and the general provisions of the last sentence remain applicable in jury as well as nonjury cases.

This amendment also changes the last sentence of this subdivision to accord with the amendment to Rule 19.

Failure To Prosecute

Trial court abused discretion in dismissing action for failure of plaintiff to prosecute where case was returned by supreme court to lower court for new trial but trial court failed to set it for trial at next jury term as per order of supreme court. *Jangula v. United States Rubber Co.*, 149 M 241, 425 P 2d 319.

Case was properly dismissed for failure of plaintiff to prosecute where nothing was done to bring it to trial for over twelve years despite fact that defendant had shown no injury by delay, that attorneys had agreed to get together and try to work out agreement and that defendant had filed cross-complaint which was defensive in character. *Cremer v. Braaten*, 151 M 18, 438 P 2d 553.

Failure To State a Claim

This rule has no application to a motion to dismiss for failure to state a claim

under Rule 12(b). *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 750.

Findings and Conclusions

Lower court ruling that "no cause of action or claim exists or has been proven" and "the same is hereby dismissed" was sufficient compliance with the Rules despite plaintiff's contention that findings of fact and conclusions of law did not meet requirements of Rules. *Mondakota Gas Co. v. Becker*, 151 M 513, 445 P 2d 745.

Insufficiency of Evidence

District court erred in not granting de-

fendant's motions for dismissal and directed verdict where evidence, viewed in light most favorable to plaintiff, did not support verdict for him. *MacDonald v. Protestant Episcopal Church*, 150 M 332, 435 P 2d 369.

Defendant was entitled to have motion for involuntary dismissal granted where plaintiff wholly failed to establish prima facie case of negligence. *Knowlton v. Sandaker*, 150 M 438, 436 P 2d 98.

References

Whitcraft v. Semenza, 145 M 97, 399 P 2d 757.

DECISIONS UNDER FORMER LAW

Insufficient Evidence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to show the lack of proper care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. *Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

No cause should be withdrawn from the jury unless evidence is susceptible of but one construction by reasonable men and that in favor of the defendant, or the evidence is in such condition that if the jury

returned a verdict in favor of the plaintiff, it would be the court's duty to set it aside. *Jackson v. William Dingwall Co.*, 145 M 127, 399 P 2d 236.

Trial court properly granted directed verdict for defendant, employer and ranch foreman, where plaintiff, a ranch hand, was injured while riding atop a bobsled loaded with hay, since plaintiff failed to make out a prima facie case that tipping of bobsled was due to negligence. *Jackson v. William Dingwall Co.*, 145 M 127, 399 P 2d 236.

(e) **FAILURE TO SERVE SUMMONS.** No action heretofore or hereafter commenced shall be further prosecuted as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court within three years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said three years. When more than one defendant has been named in an action, the action may within the discretion of the trial court be further prosecuted against any defendant who has appeared within three years, or upon whom summons which has been issued within one year has been served and return made and filed with the clerk within three years as herein required.

History: En. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment inserted "as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced" in

the first part of the first sentence; substituted "unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court" for "summons shall have been served and return made" in the latter part of the first sentence; and added the second sentence.

Commission Note to 1965 Amendment

This clarifies and brings together the laches provisions with respect to issuance and service of summons. At present Rules 4 C(1), 41(e), Section 93-3002, R. C. M. 1947, and Rule 12(b) all need to be referred to. This amendment incorporates the laches provision of Section 93-4705 (7), R. C. M. 1947, which was repealed by Chapter 13 of the 1961 Session Laws.

This amendment renders Section 93-3002, R. C. M. 1947, unnecessary, and that section superseded and added to Tables B and C.

How Raised

Where return was made more than three years after commencement of action, this subsection, since it is not a statute of limitations, could be raised by motion under Rule 12(b), rather than pleaded as an affirmative defense. *Whitcraft v. Semenza*, 145 M 94, 399 P 2d 757.

Pending Actions

Even though there was a lapse of a year between repeal of former section 93-4705, R. C. M. 1947, and adoption of this rule, which is identical, application of this rule to a pending action in which return was made more than three years after commencement of the action was proper, since not only was a reasonable time al-

lowed before the effective date of the change, but the information was widely distributed. *Whitcraft v. Semenza*, 145 M 94, 399 P 2d 757.

Probate Matters

Rule does not apply to service of summons in suit on rejected claim in probate which is governed exclusively by statute providing for contesting rejected claims in probate. *Werning v. McFarland*, 149 M 137, 423 P 2d 851.

Renewal of Claim

A judgment is not *res judicata* unless it is on the merits, so that a dismissal under this rule, since it is not a statute of limitations, does not constitute a bar to another suit on the same claim. *Whitcraft v. Semenza*, 145 M 94, 399 P 2d 757.

Statute of Limitations

Dismissal under this rule for failure to have summons issued within one year after commencement of the action is a dismissal for neglect to prosecute within the meaning of section 93-2708: that section does not operate to permit the commencement of a new action after expiration of the statute of limitations. *State ex rel. Equity Supply Co. v. District Court*, 159 M 34, 494 P 2d 911.

DECISIONS UNDER FORMER LAW

Quashing Summons

District court exceeded its jurisdiction in denying motion to quash summons and dismiss action where the summons had not been served and returned within the

three years required by this rule prior to 1965 amendment. *State ex rel. Belwin, Inc. v. Davison*, 148 M 345, 420 P 2d 842, 844.

Rule 42. Consolidation—Separate trials.

(a) CONSOLIDATION.

"Pending Before the Court"

Cases as to which time for appeal had passed were not "pending before the court" so as to make them amenable to consolidation with cases not yet reduced

to judgment even though amount of insolvent warehouseman's bond might not be sufficient to satisfy all claims in full. *Peavey Company v. Agri-Services, Inc.*, — M —, 517 P 2d 718.

(b) SEPARATE TRIALS.

Abuse of Discretion

In wrongful death and survival action trial court abused its discretion by denying motion for separate trial on issue of validity of release where separate trials would result in convenience and economy of time to parties, witnesses and court and since possible finding that release was valid would end matter and trial of complicated issue of wrongful death and survival would be avoided. *State ex rel. Northern Pacific R. Co. v. District Court*

of Sixteenth Judicial District in and for County of Rosebud, 155 M 91, 467 P 2d 145.

Discretion of Court

Grant of separate trial under this section on counterclaims on matters unrelated to plaintiff's complaint was within discretion of district judge and was not disturbed since no clear abuse of discretion was apparent. *State ex rel. Rooks v. District Court*, 153 M 189, 456 P 2d 308.

Insurance Coverage

Federal court dismissed action for declaratory judgment declaring obligations of casualty insurance company under an automobile insurance policy, which allegedly had been canceled prior to the time of the accident involving the automobile of the insured who was being sued for injuries resulting from the accident in the state court, since the issues, which did not involve federal law, could be solved in the state court wherein third-party complaint under M. R. Civ. P., Rule 14(a), had been filed by the insured against the insurer in which insured sought to hold the insurer to the terms of the policy, where state court could dispose of the coverage problem first under this rule. *Western Casualty & Surety Co. v. Pinson*, 255 F Supp 624, 625.

Permissive Joinder

Since this section allows for separate trials, practically, it seems desirable to give the broadest possible reading to the permissive language of Rule 20. *Wheat v. Safeway Stores, Inc.*, 146 M 105, 404 P 2d 317.

Successor Judge

Disqualification of district judge did not render res judicata or the law of the case his previous ruling denying severance of claims against different defendants; successor judge could reconsider and grant severance. *State ex rel. Stenberg v. Nelson*, 157 M 310, 486 P 2d 870.

References

Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

Rule 43. Evidence.**(b) SCOPE OF EXAMINATION AND CROSS-EXAMINATION.****Agent of Opposing Party**

District court properly permitted plaintiff to examine driver for company under contract with defendant as an adverse witness under this section, for the purpose of establishing the driver's negligence to be imputed to the defendant, because under the applicable Federal Employer's Liability Act the driver was an agent of the defendant. *Salvail v. Great Northern Ry. Co.*, 156 M 12, 473 P 2d 549.

Plaintiff Called as Defense Witness

Where plaintiff appeared as her own only witness and was not cross-examined by the defendant who then called her as a defense witness, the defense was bound

by her testimony even though it came after the plaintiff herself had rested her case. *Close v. Ruegsegger's Estate*, 143 M 32, 386 P 2d 739.

Statutory Proceedings

In statutory action brought to remove administrator for misappropriation of funds of estate, administrator could be examined as adverse witness since Rule 81, excluding statutory proceedings from Rules of Civil Procedure to extent that statutory proceedings are contrary to Rules, does not bar examination of administrator as adverse witness. In *re Estate & Guardianship of Wyman*, 149 M 525, 429 P 2d 629.

(e) EVIDENCE ON MOTIONS.**Summary Judgments**

Oral testimony may be heard on mo-

tions for summary judgment. *Daniels v. Paddock*, 145 M 207, 399 P 2d 740.

(f) INTERPRETERS. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 43(f), as amended 1966.

Explanation of change: This new subdivision authorizes the court to appoint interpreters (including interpreters for the deaf), to provide for their compensation, and to tax the compensation as costs.

Rule 44. Proof of official record.**(a) AUTHENTICATION.**

(1) Domestic. An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote all but the first sentence of this rule and divided it into two clauses; in the first sentence, the amendment inserted "kept within the United States * * * Ryukyu Islands" and substituted "by" for "with" before "a certificate that."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 44, as amended 1966.

Explanation of change: The new provisions of subdivision (a)(1) on proof of official records kept within the United States are similar in substance to those heretofore appearing in Rule 44. There is a more exact description of the geographical areas covered.

Under subdivision (a)(2) foreign official records may be proved as heretofore, by means of official publications thereof. The rest of subdivision (a)(2) aims to provide greater clarity, efficiency, and flexibility in the procedure for authenticating copies of foreign official records. It is provided that an attested copy may be obtained from any person authorized by the law of the foreign country to make the attestation without regard to whether he is charged with responsibility for maintaining the record or keep it in his custody. The amendment specifically permits use of the chain-certificate method of authentication.

Although the amended rule will generally facilitate proof of foreign official records, it is recognized that in some situations it may be difficult or even impossible to satisfy the basic requirements of the rule. Therefore the final sentence of subdivision (a)(2) provides the court with discretion to admit an attested copy of a record without a final certification, or an

attested summary of a record with or without a final certification. Reasonable effort must be made to satisfy the basic requirements.

(b) **LACK OF RECORD.** A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 44, as amended 1966.

Explanation of change: Subdivision (b) [Rule 44(b)] is accommodated to the changes made in subdivision (a) [Rule 44(a)].

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

(c) **OTHER PROOF.** This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 substituted "authorized by law" for "any applicable statute or by the rules of evidence at common law."

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

The rule appears to be consistent with and complementary to Rule 9(d) and R. C. M. 1947, section 93-501-6.

Advisory Committee's Note

Source: Fed. R. Civ. P. 44.1, as adopted 1966.

Explanation of change: This is new and clears up uncertainty as to whether foreign law must be pleaded. Under this rule the notice need not be given in the pleadings.

The rule affords a procedure for raising and determining an issue of foreign law. It does not require the court to take judicial notice of the foreign law.

Power of Court

Under this section, trial court has power to fashion procedures for determination of whether reciprocity of transfer and reciprocity of inheritance exists between citizens of state and citizens of foreign country. In re Estate of Giurgiu, 155 M 18, 466 P 2d 83, appeal dismissed 399 US 901, 26 L Ed 2d 555, 90 S Ct 2195.

Rule 45. Subpoena.

(c) SERVICE.

Attorney as Witness

This rule does not distinguish between attorney and the layman; if an attorney would not have attended a hearing except

for a subpoena, he is entitled to his statutory witness fee and mileage. United Bank of Pueblo v. Iverson, — M —, 525 P 2d 21.

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings, orders, or findings of the court are unnecessary; but for all purposes it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take, or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

History: En. Sec. 46, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

and inserted "or findings" in the first clause of the rule.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: The attention of the Committee has been invited to considerable confusion existing under the old wording of this rule, of Rule 52, and of Section 93-5305, R. C. M. 1947, which statute is now being superseded. It is thought by rewriting Rule 46 and Rule 52 the existing confusions can be avoided.

Amendments

The 1969 amendment inserted "Except as provided in Rule 52, with respect to findings by the court" at the beginning of the section.

The 1971 amendment deleted the language inserted by the 1969 amendment

DECISIONS UNDER FORMER LAW**Exceptions to Findings and Conclusions**

Effect of rule providing that formal exceptions are unnecessary but requiring aggrieved party to make objections and grounds therefor known to court, when considered with statute providing that no judgment will be reversed on appeal for defects in findings unless exceptions are made to findings complained of in lower court, is that counsel must point out ex-

ceptions to findings on motions where court is required to make findings of fact and conclusions of law so that trial court may have opportunity to correct them and upon failure to do so, findings become final and judgment will not be reversed. *Stapp v. Nickels*, 150 M 220, 434 P 2d 141, distinguished in 157 M 295, 299, 485 P 2d 703.

Rule 47. Jurors.

(b) **MANNER OF SELECTION AND ORDER OF EXAMINATION OF JURORS.** From the entire jury panel, an initial panel of 20 jurors shall be called in the first instance, and before any voir dire examination of the jury shall be had. Examination of all jurors in the initial panel shall be completed by the plaintiff before examination by the defendant. If challenges for cause are allowed, an additional juror shall be called from the entire panel immediately upon the allowance of challenge, and the juror called to replace the juror excused for cause shall take the number of the juror who has been excused, to provide a full initial panel of 20 jurors, whose examination shall be completed before any peremptory challenges are made. When the voir dire examination has been completed, each side shall have four peremptory challenges, and they shall be exercised by the plaintiff first striking one, the defendant then striking one, and so on, until each side has exhausted or waived its right. In event one or more alternate jurors are called, the next jurors remaining in the initial panel, if any, shall be called by the clerk to be the alternate jurors. In event all jurors remaining of original initial panel of 20 jurors, including those substituted for those jurors excused for cause, have been subjected to peremptory challenge, then the clerk shall call ad-

ditional jurors from the remainder of the jury panel to provide alternate jurors who will be subject to challenge as provided by law. In event there is more than one party defendant, and should it appear that each defendant is entitled to peremptory challenges, then the original panel shall be increased to provide four additional jurors for each defendant who is entitled to exercise peremptory challenges. The clerk shall keep a record of the order in which jurors are called, and in event the entire initial panel has not been exhausted by challenges, the court shall excuse sufficient of the last called jurors until a jury of twelve persons and the determined number of alternates shall remain to make up the trial jury.

History: En. Sec. 47, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 inserted "and the juror called * * * who has been excused" in the second sentence.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: In some judicial districts the practice is that the replacement juror takes a new number at the bottom of the list, in others the replacement takes the same number as the juror excused. This amendment expressly adopts the latter and makes the practice uniform throughout the state.

(c) ALTERNATE JURORS.

Alternate Juror

It was reversible error for alternate juror to be in the jury room for about fifteen minutes during deliberations and to have lunch with the jury; court is not

at liberty to make exceptions based on length of time, actual harm, or fact that person involved was a sworn alternate juror. State Highway Commission v. Dunks, — M —, 531 P 2d 1316.

Rule 50. Motion for a directed verdict and for judgment notwithstanding the verdict.

(a) **MOTION FOR DIRECTED VERDICT—WHEN MADE, EFFECT.** A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 added the last sentence, giving effect to an order for directed verdict even without the jury's assent.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: The practice, after the court has granted a motion for a directed verdict, of requiring the jury to express assent to a verdict they did not reach by their own deliberations serves no useful purpose and may give offense to members of the jury.

Breach of Employment Contract

Statement by office secretary of local union to its executive officer that latter had been removed from office was not the type of information which would lead a prudent person to believe she had

been discharged, and local union was entitled to directed verdict in officer's action for breach of employment contract where there was no evidence that officer had in fact been discharged, she was not subject to discharge at will and she had never talked to anyone in authority to confirm her discharge. *Hannifin v. Retail Clerks International Assn.*, — M —, 511 P 2d 982.

Circumstances Under Which Motion Should Be Granted

Denial of motion for directed verdict, made by lessor of destroyed building in suit by lessee claiming that premises were repairable, was cause for reversal where, viewing evidence most favorable to plaintiff lessee and considering as proven everything which evidence tended to prove, reasonable man could come to no other conclusion but that building involved was destroyed. *Solich v. Hale*, 150 M 358, 435 P 2d 883.

Directed Verdict on Issue of Liability

Although rodeo company was the owner of dangerous animals, it was not an insurer, and trial court correctly denied directed verdict against rodeo on issue of liability where show was produced in facilities erected and maintained by county. *Ross v. Golden State Rodeo Co.*, — M —, 530 P 2d 1166.

Failure of Proof

In action for breach of contract, an ex-

hibit of 123 pages of inaccurate information about all the deliveries made by the plaintiff was insufficient proof without supporting testimony, and directed verdict for defendant was proper. *LaVelle v. Kenneally*, — M —, 529 P 2d 788.

Granting Motion at End of Plaintiff's Case

Court erred in granting plaintiff's motion for directed verdict before defendant had opportunity to present his case, where defendant was precluded from offering evidence to rebut presumption of negligence raised by plaintiff's case in chief based on doctrine of *res ipsa loquitur*, notwithstanding fact that plaintiff had examined all witnesses to accident during his case in chief. *Baker v. Rental Service Co.*, 150 M 166, 432 P 2d 624.

Refusal to Grant Motion

Party who alleges error in refusing his motion under this section had burden of showing that error was in fact committed. *Fuchs v. Huether*, 154 M 11, 459 P 2d 689.

Waiver of Jury Trial

Where both parties in jury trial moved for directed verdict at the close of evidence, trial court improperly granted plaintiff's motion, since there were factual issues for jury to decide and since, under this section, a motion for a directed verdict is not a waiver of trial by jury. *Borgmann v. Diehl*, 155 M 458, 473 P 2d 529.

(b) **MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.** Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after service of notice of entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Motions provided by this subdivision shall be heard and determined within the times provided by Rule 59 for the hearing and determination of motions for new trial.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of September 7, 1965 added the second paragraph.

The amendment of September 29, 1967 substituted the present heading for "Reservation of decision on motion" and, in the second sentence of the first paragraph, substituted "Not later than 10 * * * judgment" for "Within 10 days after the reception of a verdict."

The amendment of May 21, 1969, in the second paragraph, substituted "Rule 59 * * * for new trial" for "Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for new trial."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: A motion for

judgment notwithstanding the verdict will not lie unless it was preceded by a motion for a directed verdict made at the close of all the evidence.

This departs from the federal amendment in providing that the time limit for making a motion for judgment n.o.v. is 10 days after service of notice of entry of judgment, rather than 10 days after entry of judgment as provided in the federal amendment. This is consistent with the provisions of Rules 59(b) (time for motion for a new trial) and 52(b) (time for motion to amend findings by the court).

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: A housekeeping change to conform with superseding section 93-5606, R. C. M. 1947, by the amendment of Rule 59.

Refusal to Grant Motion

Party alleging error in refusing his motion under this section had burden of showing that error was in fact committed. *Fuchs v. Huether*, 154 M 11, 459 P 2d 689.

(c) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—CONDITIONAL RULINGS ON GRANT OF MOTION.

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the supreme court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the supreme court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after service of notice of entry of the judgment notwithstanding the verdict.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: The procedure

where a party joins a motion for a new trial with his motion for judgment n.o.v., or prays for a new trial in the alternative has often been misunderstood. This amendment summarizes the practice. It does not alter the effects of a jury verdict or the scope of appellate review.

(d) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—DENIAL OF MOTION. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion

may, as respondent, assert grounds entitling him to a new trial in the event the supreme court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the supreme court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: This subdivision does not attempt a regulation of all aspects of the procedure where the motion

for judgment n.o.v. and any accompanying motion for a new trial are denied, since the problems have not been fully canvassed in the decisions and the procedure is in some respects still in a formative stage. It is, however, designed to give guidance on certain important features of the practice.

Rule 51. Instructions to jury—Objection.

Confused Objection

Purpose of this rule is to allow a judge an opportunity to correct his own errors, and where objection is not clearly raised due to efforts of attorneys to strike jury instructions regarding highest and lowest estimates of just compensation, such objection will not be heard on appeal. *State Highway Commission v. Beldon*, — M —, 531 P 2d 1324.

Instruction in Ordinary Care

In action for wrongful death of boy who was killed by brahma bull at rodeo, jury instructions on ordinary care of a reasonable person were sufficient where there was no proof of negligence against the rodeo company. *Ross v. Golden State Rodeo Co.*, — M —, 530 P 2d 1166.

Instructions on Nonapplicable Law

In action for negligence in making left turn in no passing zone, it was error to instruct jury on inapplicable laws prohibiting anyone from driving on left side of road, especially when the instruction was combined with instruction that statutory violations are negligence as a matter of law. *Rude v. Neal*, — M —, 530 P 2d 428.

Preserving for Review

Appellant who objected to jury instruction but did not specifically object to an interchange of words therein did not preserve review of the interchange. *Cross v. Trethewey*, 155 M 337, 471 P 2d 538.

Objections to jury instructions made at trial on grounds of insufficient evidence to support the instructions but not pointing out how the evidence was insufficient,

did not preserve the question for review on appeal. *Salvail v. Great Northern Ry. Co.*, 156 M 12, 473 P 2d 549.

Plaintiff's contention on appeal which is clearly an objection to instruction in trial court will not be considered by supreme court where plaintiff failed to object to instruction in trial court. *Roberts Realty Corp. v. City of Great Falls*, 160 M 144, 500 P 2d 956.

Refusal to Give Instructions

Denial of offered instructions which were adaptable to defendant's theory of the case was prejudicial error where such denial deprived him of a possible defense of assumption of risk. *Wollan v. Lord*, 142 M 498, 385 P 2d 102, distinguished in 145 M 486, 488, 402 P 2d 41.

It is not error for the trial judge to refuse to give specific instruction where the subject in question has been adequately covered by other instructions. *Holland v. Konda*, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

Contention that trial court erred by not instructing jury on defendant's duties toward trespasser was without merit where such instruction was not offered by plaintiff as required by this section. *Gunderson v. Brewster*, 154 M 405, 466 P 2d 589.

Refusal of instruction on reckless misconduct and the defense of contributory negligence was error in negligence action where both drivers were driving late at night without headlights, and reasonable men could reach opposing conclusions as to whether or not defendant was willfully and wantonly negligent. *Mallory v. Cloud*, — M —, 535 P 2d 1270.

Rule 52. Findings by the court.

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state

separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1969 amendment rewrote the first part of the rule and made it into a separate paragraph requiring that findings be reduced to writing and served on the parties.

The 1971 amendment restored the language as it stood prior to the 1969 amendment, with minor changes; and inserted new provisions as the second, third and fifth sentences.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Sections 93-5302, 93-5305, 93-5306, and 93-5307, R. C. M. 1947, are hereby superseded. The purpose of changing Rule 52, along with the change made in Rule 46, is twofold. It should eliminate the confusions that now exist with respect to the lack of necessity of making exceptions to the rulings and orders of the court, as distinct from the requirement that appropriate exceptions be made to findings of the court on trial of fact issues. In addition, it incorporates in this one rule the existing practice and procedure with respect to exceptions to findings of the court, and eliminates the necessity of researching for, and referring

separately to, controlling statutes, case decisions, and rules, and then trying to correlate all three.

Appellate Review of Findings

Findings of fact made by trial court will not be disturbed where they are supported by preponderance of evidence. *Western Foundry, Inc. v. Matelich*, 150 M 228, 433 P 2d 789.

Sufficiency of Findings

Lower court ruling that "no cause of action or claim exists or has been proven" and "the same is hereby dismissed" was sufficient compliance with Rules despite plaintiff's contention that findings of fact and conclusions of law did not meet requirements of Rules. *Mondakota Gas Co. v. Becker*, 151 M 513, 445 P 2d 745.

Summary Judgment

Even though findings are not required in granting summary judgment, if findings are made that form the basis for judgment and if the evidence does not support the findings, the judgment will be reversed. *Upper Missouri G & T Electric Cooperative v. McCone Electric Co-op., Inc.*, 157 M 239, 484 P 2d 741.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698; *Tolson v. Tolson*, 145 M 87, 399 P 2d 754.

(b) **AMENDMENT.** Upon motion of a party made not later than 10 days after notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The amendment of August 1, 1965 inserted "service of notice of" before "entry of judgment" in the first sentence.

The amendment of September 7, 1965 added a second paragraph providing that motions to amend should be heard and determined within the time for determining motions for new trial as provided by section 93-5606.

The 1969 amendment rewrote the rule to require that parties file written requests for findings, to remove as ground for appeal the want of findings not requested by the party, and to provide for exceptions to findings and the determination thereof.

The 1971 amendment restored the language as it stood prior to the 1965 amendments; inserted "notice of" before "entry of judgment" in the first sentence; and added new language as the third sentence.

Commission Note to August 1, 1965 Amendment

Under Rule 77(d) the prevailing party

has 10 days after the entry of judgment to give the unsuccessful parties notice of such entry. The change in 52(b) is an adjustment to this provision, and is designed to meet the possibility that the prevailing party is the only party that knows of the entry of the judgment and waits 10 days before giving the unsuccessful party notice of such entry. The provision is similar to that found in Rule 59(b) and (e).

Advisory Committee's Note to May 21, 1969 Amendment

See Advisory Committee's Note under Rule 52(a).

Amendment of Findings and Judgment

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment combined with a motion for a new trial, filed on September 28, 1965, was a motion contemplated by this rule and Rule 59(e) and was not governed by the time limits of section 93-5606. *State ex rel. Rozan v. District Court of Sixteenth Judicial Dist.*, 147 M 532, 416 P 2d 19, 21.

References

Sztaba v. Great Northern Ry. Co., 147 M 185, 411 P 2d 379.

DECISIONS UNDER FORMER LAW

Exceptions Required for Reversal

Under former statute which was superseded by this Rule, objections to findings of district court could not be raised for the first time upon appeal. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

Mandate of former statute (superseded by this Rule) that findings of district court would not be reviewed on appeal unless exceptions were taken was not changed by fact that counsel on appeal was not same counsel who tried case in district court. *Olsen v. United Benefit Life Ins. Co.*, 150 M 147, 432 P 2d 381.

Rule providing that formal exceptions are unnecessary if aggrieved party makes his objections and grounds therefor known to court and former statute (superseded by this Rule) providing that no judgment will be reversed on appeal for defects in findings unless exceptions are made in lower court were required to be read together with result that it was necessary for counsel to point out exceptions to findings so that trial court might have opportunity to correct them and failure to do so meant findings became final and judgment would not be reversed. *Stapp v. Nickels*, 150 M 220, 434 P 2d 141.

Under former statute, failure to except to findings of trial court made them final and judgment would not be reversed. *Keller v. Martin*, 153 M 9, 452 P 2d 422.

Under former statute, exceptions had to be made to trial court's defects in findings to give trial court opportunity to correct them or they would become final and not subject to appeal. In *re Estate of Dolezilek*, 156 M 224, 478 P 2d 278.

Prior to 1971 amendment, no judgment would be reversed on appeal for defects in findings unless exceptions had been made in district court. *State ex rel. Bennett v. Dowdall*, 157 M 11, 482 P 2d 572.

Prior to 1971 amendment, failure to except to findings of district court was fatal to appeal. *Sorenson v. Lynch*, 157 M 116, 483 P 2d 907.

Prior to the 1971 amendment dismissal for failure to except to findings is the unavoidable result only in cases where the findings control, and in those instances they cannot be questioned on appeal; however, where the findings do not control, appellants' failure to file exceptions does not require dismissal. *Kretzschmar v. Bickerstaff*, 158 M 178, 489 P 2d 1285.

Prior to 1971 amendment, failure to file exceptions to court's finding within

Rule 52(c)

RULES OF CIVIL PROCEDURE

the time prescribed by this rule did not preclude appeal where party called attention of the court to the alleged errors in the findings by way of a motion to amend

the judgment, coupled with a motion for new trial, which was timely served and filed. *Cope v. Cope*, 158 M 388, 493 P 2d 336.

(c) Repealed.

Compiler's Notes

Supreme Court Order No. 10750-9, dated May 21, 1969, created a new Rule 52 (c) requiring statement of conclusions

of law and entry of judgment. Supreme Court Order No. 10750-10, dated October 22, 1971, effectively repealed Rule 52 (c) by omitting it from Rule 52 as amended.

Rule 53. Masters.

(e) REPORT.

Hearing on Report

No hearing is necessary when no objections are made to report by parties after being notified by clerk that special

master has filed his report. *State ex rel. Ross v. District Court, Fourth Judicial District*, 150 M 233, 433 P 2d 778.

VII. JUDGMENT

Rule 55. Default.

56. Summary judgment.

59. New trials—Amendment of judgments.

60. Relief from judgment or order.

Rule 54. Judgments—Costs.

(b) JUDGMENT UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES.

Amendment To Include Codefendant

Case would be remanded to district court for purpose of amending, by incorporating appropriate terms, judgment which omitted to name defaulting codefendant who was jointly and severally liable on obligation. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

Separate Claims on Note and Mortgage Upon default in an action against the

unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note could properly proceed at its option against either security in the same action. *Bozeman Deaconess Foundation v. Cowgill*, 143 M 98, 387 P 2d 435.

References

State ex rel. Kober and Kyriss v. District Court, 147 M 116, 410 P 2d 945.

(c) DEMAND FOR JUDGMENT.

Divorce Proceedings

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with M. R. Civ. P., Rule 55(b) and no relief different from that demanded in the complaint was granted in violation of this rule, an appeal on those grounds was dismissed by supreme court upon its own motion where no application to set aside default or judgment was made under Rule

60(b). *Sowerwine v. Sowerwine*, 148 M 195, 418 P 2d 859, 861.

Where pleadings of both parties in divorce proceedings showed that they expected the court to make orders relative to the property, the court had authority to vest all the property in the husband and order alimony paid where justified by the facts, even though neither party had asked for that specific disposition. *Libra v. Libra*, 157 M 252, 484 P 2d 748.

(d) COSTS.

Costs Not Allowed

Section 93-8618 particularly enumerates allowable costs under this rule; where cost of taking plaintiff's deposition was made merely for the convenience of defendant's counsel, defendant cannot include such cost in his bill of costs be-

cause deposition was for his benefit; deposition was never filed with the district court and plaintiff's counsel did not have any practical means of securing a copy. *Johnson v. Furgeson*, 158 M 170, 489 P 2d 1032.

Rule 55. Default.

(a) ENTRY.

Answer Filed after Entry by Clerk

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no

notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1). * * * [Same as parent volume.]

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative, or guardian ad litem, who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Amendment

The 1964 amendment inserted "an" before "account" in the final sentence of paragraph (2).

Motion to set aside default judgment because of plaintiff's failure to file affidavit of amount due and owing when it requested entry of default judgment was properly denied where defendant permitted judgment to be satisfied from her property, and no reason to avoid the voidable judgment had been presented. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Answer Filed after Entry by Clerk

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

Under Rule 61 omission of clerk of court to require affidavit of amount due under this rule before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Clerk's Error

Entry of default judgment by clerk of court without requiring affidavit from plaintiff of amount due and owing rendered the judgment voidable but not void. *Interstate Counseling Service v.*

Divorce Proceedings

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with this rule and no relief different from that de-

manded in the complaint was granted in violation of M. R. Civ. P., Rule 54(c), an appeal on those grounds was dismissed by the supreme court on its own motion where no application to set aside the default or judgment was made under Rule 60(b). *Sowerwine v. Sowerwine*, 148 M 195, 418 P 2d 859, 861.

Ministerial Function

Clerk of court in entering a default judgment is performing a ministerial function and must follow procedures in detail and absolutely. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Nonprejudicial Error

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of

application for default judgment as required by paragraph (2) of this rule and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment filed under M. R. Civ. P., Rule 55(c). *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 94.

Notice

District court was not deprived of jurisdiction to enter default judgment by plaintiff's failure to give three-day notice required by subdivision (2) of this rule where defendant had taken no action from the time of the entry of the default judgment until his death, a period of approximately thirteen months, the judgment was attacked for the first time by his executrix after approximately one year and seven months had elapsed, and almost four years had passed when the motion to set aside and vacate judgment was filed. *Sikorski & Sons, Inc. v. Sikorski*, — M —, 512 P 2d 1147.

(c) DEFAULT — SETTING ASIDE — EXTENSION OF TIME, ETC.

Answer Filed after Entry by Clerk

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

Discretion of Court

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by M. R. Civ. P., Rule 55(b)(2), and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment filed under this rule. *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 94.

Denial of defendant's motion to set aside entry of default judgment and granting of plaintiff's motion for entry of default judgments were not an abuse of discretion where defendant's claims that he had not been informed of proceedings against him were countered by fact that he had been represented by counsel at material times and that he

was aware of necessity of filing answer within thirty days of denial of his motion to dismiss. *Johnson v. Matelich*, — M —, 517 P 2d 731.

Failure to Appeal

Defendant's failure to appeal the denial of his motion to set aside default judgment renders the decision *res judicata* and precludes the filing of a second action to litigate the same claim or issues decided by the court. *Kamp Implement Co. v. Amsterdam Lumber, Inc.*, — M —, 533 P 2d 1072.

Good Cause

Motion to set aside entry of default judgment grounded on failure of clerk to give notice to defendant of entry of default failed to show good cause since no notice of entry of default by the clerk of the district court is required. *Johnson v. Matelich*, — M —, 517 P 2d 731.

Voidable Judgments

A default judgment entered prematurely pursuant to this section could not be set aside under M. R. Civ. P., Rule 60(b)(4), since Rule 60(b)(4) applies to void and not voidable judgments. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

References

Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151.

DECISIONS UNDER FORMER LAW

Terms of Opening of Default

Fact that corporate defendant claimed sheriff had never served summons upon the corporation, sheriff did not remember service of the summons, and default was not taken until seven years after the

plaintiff was injured constituted clear, unequivocal and convincing proof to rebut weight accorded sheriff's return of service of process under section 16-2707 to open default judgment. *Sewell v. Beatrice Foods Co.*, 145 M 337, 400 P 2d 892.

Rule 56. Summary judgment.**(a) FOR CLAIMANT.****Negligence Actions**

Ordinarily, issue of negligence is not susceptible of summary adjudication but should motion for summary judgment be made, burden is on moving party to estab-

lish clearly that there is no factual issue to be determined and opposing party does not have burden of showing prima facie case. *Mally v. Asanovich*, 149 M 99, 423 P 2d 294.

(b) FOR DEFENDING PARTY.**Denial of Motion**

In suit by guardians of patient for personal injuries sustained when patient was being X-rayed, district court erred in granting defendant-hospital's motion for summary judgment where there was an issue of fact as to whether radiologist was an independent contractor rather than an agent of the hospital. *Kober v. Stewart*, 148 M 117, 417 P 2d 476, 479.

No Issue of Negligence

Defendant, whose electrical power lines were installed in compliance with the minimum safety requirements of the national safety code, was entitled to summary judgment in negligence action brought by plaintiff who, although aware of over-

head power lines, was severely shocked when he hoisted a long metal pole into contact with the lines while drilling a well. *Sprinkle v. DeCock*, — M —, 530 P 2d 457.

Support Proceedings

Defendant was properly granted motion for summary judgment in action to enforce amount agreed upon for support in separation agreement which had been reduced by subsequent court modifications. *Gessell v. Jones*, 149 M 418, 427 P 2d 295.

References

Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Affidavits shall not be considered for any purpose on motion for summary judgment. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

History: En. Sec. 56, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment inserted "answers to interrogatories" in the first sentence.

Commission Note to 1965 Amendment

The amendment expressly includes "answers to interrogatories" among material which may be considered on motion for summary judgment. This conforms to an amendment to the Federal Rule

adopted January 21, 1963, the Federal Rule having inadvertently omitted the phrase. The courts have generally reached by interpretation the result required by the amendment.

Affidavits

Affidavit of superintendent of banks will be struck from record on appeal from a summary judgment because under this rule it could not have been considered by the trial court in ruling on motion for summary judgment. *Miners & Merchants*

Bank v. Dowdall, 158 M 142, 489 P 2d 1274.

Appeal

Summary judgment on issue of liability only was "interlocutory in character" and not appealable until damage issue had been resolved; time for taking appeal did not run from entry of summary judgment on liability but would commence upon entry of final order. Schultz v. Adams, 161 M 463, 507 P 2d 530.

Broker's Commission

Where it was agreed that there was no written agreement to pay the broker's commission, but only an oral promise by the administrator of estate to petition court for allowance of commission, summary judgment was proper; nor did the plaintiff's presentation of various legal theories on which relief might be granted raise any genuine issue of fact. Meech v. Cure, — M —, 525 P 2d 546.

Burden of Proof

The moving party for a summary judgment has the burden of showing the absence of any genuine factual issue. Kober v. Stewart, 148 M 117, 417 P 2d 476, 478.

Contributory Negligence

Summary judgment, finding that eight-year-old plaintiff was guilty of contributory negligence as a matter of law, was improperly granted, since there is an issue of fact as to whether a child has the capacity for contributory negligence as a matter of law. Ranard v. O'Neil, — M —, 531 P 2d 1000.

Issue of Fact

Although plaintiff had not filed formal claim against city within the time limits prescribed, issues of fact as to the fact and extent of knowledge by city that plaintiff had been injured, precluded summary judgment. State ex rel. City of Bozeman v. District Court, — M —, 531 P 2d 1343.

Matters Considered

While this rule does not mention oral testimony as material to be used at the summary judgment hearing, Rule 43(e) permits the use of oral testimony upon motions, so that oral testimony may be considered upon a motion for summary judgment. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

In case in which plaintiff's deposition alone was sufficient to permit the trial judge to determine that the case contained no issue of material fact or controversy relating to the testatrix's incompetency, the trial court was correct in granting summary judgment and had no

duty to anticipate possible proof that might have been offered under the pleadings. Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

Where trial court was present during taking of depositions, facts heard by court were properly considered on motion for summary judgment pursuant to this section since oral testimony is properly within matters which court may consider under such motion. Citizens State Bank v. Duus, 154 M 18, 459 P 2d 696.

Although fact that both parties moved for summary judgment does not establish that all factual questions have been answered, trial court need only consider evidence and issues presented and has no duty to anticipate possible proof that might be offered under the pleadings. Faith Lutheran Retirement Home v. Veis, 156 M 38, 473 P 2d 503.

No Genuine Issue of Fact

No genuine issue of fact was raised in action for rescission of contract to purchase motel, where seller had represented that motel was "capable" of producing a certain income; and although seller had failed to deliver bill of sale for motel furnishings, there was no resulting damage upon which rescission could be based. Beierle v. Taylor, — M —, 524 P 2d 783.

Pleadings Not Controlling

On a motion for summary judgment the formal issues presented by the pleadings are not controlling and the court must consider the depositions, answers to interrogatories, and admissions on file, oral testimony and exhibits presented. Hager v. Tandy, 146 M 531, 410 P 2d 447.

Principal and Agent

Purported agent and principal were entitled to summary judgment where plaintiff wholly failed to establish prima facie case of negligence on the part of either even though evidence raised question of fact as to existence of agency since it would be impossible to impute negligence to principal where negligence had not been established against supposed agent. Knowlton v. Sandaker, 150 M 438, 436 P 2d 98.

Proof of Issue of Fact

Motion for summary judgment was properly granted where it was apparent from record that there was no genuine issue as to any material fact, notwithstanding aggrieved party's argument on appeal that had he been allowed to go to trial he would have presented proofs establishing genuine issue of fact, since aggrieved party presented no such proofs at hearing on original motion nor at hearing on motion to vacate judgment. Brown v. Thornton, 150 M 150, 432 P 2d 386.

Trial court, in action on farm lease, construing lessor's motion for dismissal as motion for summary judgment, improperly granted summary judgment where lessor failed to sustain burden of showing absence of any genuine issue as to material facts; record on appeal was replete with issues of fact determinable by jury. *Byrne v. Plante*, 154 M 6, 459 P 2d 266.

In an action for injuries allegedly caused by negligence of contractor and his agents, trial court properly granted summary judgment pursuant to this section where record revealed total absence of negligence on part of defendant or its employees and record revealed that nothing defendant did or failed to do was proximate cause of plaintiff's injuries. *Flansberg v. Montana Power Co.*, 154 M 53, 460 P 2d 263.

Summary judgment for defendant was proper where contract clearly prohibited competing activities only on specific premises and plaintiff admitted in his answers to interrogatories that the activities he sought to prevent were outside the premises. *Matteucci's Super Save, Drug v. Hustad Corp.*, 158 M 311, 491 P 2d 705.

Purpose

The general purpose of this rule is to dispose promptly of actions in which there is no genuine issue of fact, thereby eliminating unnecessary trial, delay, and expense. *Silloway v. Jorgenson*, 146 M 307, 406 P 2d 167.

Questions of Fact

Allegation by vendees of direct misrepresentation as to acreage they were being sold raised material issue of fact for the jury precluding summary judgment in action to cancel contract for deed and reinvest title in vendors. *Eisemann v. Hagel*, 157 M 295, 485 P 2d 703.

Summary judgment was not proper where pleadings in declaratory judgment action to invalidate municipal vacation of streets left triable issues of fact as to whether plaintiffs' easements would be

impaired by vacation. *Kemmer v. City of Bozeman*, 158 M 354, 492 P 2d 211.

Liability cannot be adjudicated upon motion for summary judgment where factual issues concerning negligence and causation are presented. *Duchesneau v. Silver Bow County*, 158 M 369, 492 P 2d 926.

Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under Rule 12(b), the judgment was not res judicata as to a second amended complaint under this section where matters outside the pleadings were presented to and not excluded by court. *Rambur v. Diehl Lumber Co.*, 144 M 84, 394 P 2d 745, 749.

Statute of Frauds

Potential buyer was properly granted summary judgment for return of earnest money when defendant realtor could produce no written documents to support his claims relative to listing property for sale and acting as real estate agent for property owners. *Pack River Co. v. Young*, — M —, 511 P 2d 12.

Third Party Complaint

Summary judgment should not have been granted in favor of third party defendant on third party complaint initiated by hospital sued for negligence by minor patient burned by defective television switch while in hospital where third party complaint raised genuine issue of material fact as to whether minor patient was injured solely through negligence of third party defendant who had leased television equipment to hospital. *Crosby v. Billings Deaconess Hospital*, 149 M 314, 426 P 2d 217.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

(d) PLAINTIFFS, COUNTERCLAIMANTS, CROSS-CLAIMANTS.

Declaratory Judgment

In declaratory judgment action in which notice of reclassification was found not to comply with statutory requirements, district court did not abuse its discretion in granting plaintiff-landowners'

motion for summary judgment without considering further issues on the power to reclassify since plaintiffs lacked standing as to those issues. *Mittelstadt v. Buckingham*, 156 M 407, 480 P 2d 831.

Rule 57. Declaratory judgments.

References

Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713; *Empire Fire &*

Marine Ins. Co. v. Goodman, 147 M 396, 412 P 2d 569.

Rule 59. New trials—Amendment of judgments.

(a) **GROUND.** A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons provided by the statutes of the state of Montana. On motion for a new trial in an action tried without a jury, the court may take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, set aside, vacate, modify or confirm any judgment that may have been entered or direct the entry of a new judgment.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 made no change in this rule.

Appellate Review

In condemnation proceeding, where state appraised land at \$18,000, condemnee appraised it at \$95,000 and jury awarded condemnee \$21,000, granting of new trial because award was inadequate was not such an abuse of trial judge's discretion as to warrant reversal in spite of the fact there was no rebuttal of state's only expert witness. *State Highway Commission v. Greenfield*, 145 M 164, 399 P 2d 989.

Inadequacy of Award

Court abused discretion in granting new trial "upon the grounds of insufficiency of the evidence to justify the verdict in that the verdict awarded by the jury to the plaintiff is wholly inadequate" where there was conflict in evidence and where it was question for jury whether injuries suffered by passenger were caused by grossly negligent operation of car or whether passenger assumed risk of going into car driven by man who had several drinks. *Heen v. Tiddy*, 151 M 265, 442 P 2d 434.

Jury Misconduct

New trial was properly granted where foreman of jury made his own investiga-

tion at the scene of the accident after hearing testimony and informed the other members of jury, during their deliberation, of the results of his investigation. The foreman was guilty of misconduct upon which verdict could be impeached by affidavits of jurors. *Goff v. Kinzle*, 148 M 61, 417 P 2d 105, 107, distinguished in 456 P 2d 835, 496 P 2d 1136, 1140.

Mistake or Inadvertence

Grant of new trial to permit plaintiff to give additional testimony on issue of damages only was not improper, notwithstanding that ground for relief was mistake or inadvertence and should have been given pursuant to Rule 60(b), where no intervening rights had attached in reliance upon judgment and no actual injustice would ensue. *John J. Ming, Inc. v. District Court*, 155 M 84, 466 P 2d 907.

New Evidence

Ex parte affidavit which alleged newly discovered evidence but was only cumulative in nature was insufficient in light of the record to authorize a new trial. *Fisher v. Mitzel*, 158 M 265, 491 P 2d 186.

Recomputation of Hours

Hearing on a case remanded for recomputation of hours worked by the plaintiff should not include the reception of new evidence, but merely a recalculation of evidence already in the records. *Glick v. State, Montana Department of Institutions*, — M —, 528 P 2d 686.

DECISIONS UNDER FORMER LAW**Right To Appeal**

Defendant was entitled to appeal, in spite of time limitation of section 93-5606 for filing bill of exceptions where motion for new trial was combined with motion to amend findings and request for

review of facts, conclusions of law and judgment, since limitation under section 93-5606 did not apply prior to enactment of new rules of civil procedure. *Crissey v. State Highway Commission*, 147 M 374, 413 P 2d 308.

(b) **TIME FOR MOTION.** A motion for a new trial shall be served not later than 10 days after service of notice of the entry of the judgment.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 made no change in this rule.

References

Clark v. Worrall, 146 M 374, 406 P 2d 822.

(c) **TIME FOR SERVING AFFIDAVITS.** When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which periods may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 made no change in this rule.

(d) **TIME FOR HEARING ON MOTION.** Hearing on the motion shall be had within 10 days after it has been served, or within 10 days after the party opposing the motion for new trial has served his affidavits as set forth in subparagraph (c) hereinabove except that at any time after the notice of hearing on the motion has been served the court may issue an order continuing the hearing for not to exceed 30 days. In case the hearing is continued by the court, it shall be the duty of the court to hear the same at the earliest practicable date thereafter, and the court shall rule upon and decide the motion within 15 days after the same is submitted. If the court shall fail to rule upon the motion within said time, the motion shall, at the expiration of said period, be deemed denied.

The decision on the motion may be entered in the minutes of the court, or may be made in writing in chambers or in any county in the state where the judge may be, and be filed with the clerk of court in the county where the action is pending. Upon the hearing, reference may be had in all cases to the pleadings and the orders of the court on file, and reference may also be had to any depositions and documentary evidence offered on the trial, and to the proceedings on the trial and, when necessary, reference may be had to the notes of the court reporter.

If the motion is not noticed up for hearing and no hearing is held thereon, it shall be deemed denied as of the expiration of the period of time within which hearing is required to be held under this Rule 59.

History: En. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Compiler's Notes

The amendment of Rule 59 by Supreme Court Order No. 10750-9 enacted this subparagraph as Rule 59(d) and designated former Rules 59(d) and 59(e) as 59(e) and 59(f), respectively.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Section 93-5606, R. C. M. 1947, is hereby superseded. There has been some confusion by reason of ambiguous language in section 93-5606,

R. C. M. 1947, a hold-over statute from the practice which existed before the rules were adopted, and because of the necessity of researching for, and referring to, the case decisions under the statute spelling out the jurisdictional time limits and the effect thereof. It is felt that by incorporating our practice into this one rule, and eliminating the necessity of referring to statutes and case decisions, that it will be easier for the practitioner to comply.

Expiration of Time

Motion for new trial was automatically denied ten days after service where motion did not contain a notice of hearing

and no hearing was held, despite district court clerk's letter dated twenty-two days after filing of motion, informing movant that motion for new trial had been denied. *Leitheiser v. Montana State Prison*, 161 M 343, 505 P 2d 1203.

Failure to Comply

Granting of new trial was reversible error where time limits set forth in this rule were disregarded. *Cain v. Harrington*, 161 M 401, 506 P 2d 1375.

DECISIONS UNDER FORMER LAW

Appellate Review

The appellate court may not disturb the findings of the trial court in ordering a new trial without a showing of abuse of discretion. *Campeau v. Lewis*, 144 M 543, 398 P 2d 960.

Disqualification of Judge

Section 93-901 does not permit disqualification of a judge pending motion for a new trial under this rule. *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

Judge's Discretion

The jury is delegated the task of finding the facts, but the trial judge has the discretion to prevent a miscarriage of justice by granting a new trial if there is an insufficiency of evidence to support the verdict. *Campeau v. Lewis*, 144 M 543, 398 P 2d 960, explained in *Morris v. Corcoran Pulpwood Co.*, 154 M 468, 465 P 827.

Purpose of Rule

The purpose of this rule is to give a trial judge power to prevent what he considers a miscarriage of justice. *Campeau v. Lewis*, 144 M 543, 398 P 2d 960.

Remand by Supreme Court

Where supreme court vacated orders of judge who had been disqualified and remanded motion for new trial for hearing before new judge, the time limits of this rule were not applicable since there was no final judgment from which time limits could be computed. *Kamp Implement Co. v. Amsterdam Lumber, Inc.*, — M —, 533 P 2d 1072.

Scope

This rule permits the trial judge to order a new trial on his own initiative for the same reasons one could be ordered pursuant to section 93-5603 and is subject to the same interpretations as expressed in previous opinions on motions for new trials before adoption of the rule. *Campeau v. Lewis*, 144 M 543, 398 P 2d 960.

Time Limits

Combined motion for new trial and to alter, amend and supplement findings of fact, conclusions of law and judgment was not subject to time limits of former section 93-5606 requiring prompt hearing on new trial motion and superseded by this rule. *State ex rel. Rozan v. District Court, Sixteenth Judicial District*, 147 M 532, 416 P 2d 19, 21. See also *Crissey v. State Highway Commission*, 147 M 374, 413 P 2d 308.

References

Waite v. Waite, 143 M 248, 389 P 2d 181; *State ex rel. Wilson v. District Court*, 143 M 543, 393 P 2d 39.

(e) ON INITIATIVE OF COURT. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Compiler's Notes

The amendments of Rule 59 by Supreme Court Order No. 10750-9 designated this former Rule 59(d) as Rule 59(e).

Amendments

The amendment of September 29, 1967 added the second sentence and made changes in phraseology.

The amendment of May 21, 1969 made no change in the wording of this rule.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 59(d), as amended 1966.

Explanation of change: The purpose of this amendment is to make it clear that a court, after notice and opportunity to be heard, may grant a new trial even though

a motion for new trial has been made, for a ground not stated in the motion. Some cases have held otherwise.

(f) **MOTION TO ALTER OR AMEND A JUDGMENT.** A motion to alter or amend the judgment shall be served not later than 10 days after the service of the notice of the entry of the judgment, and may be combined with the motion for a new trial herein provided for. This motion shall be heard and determined within the time provided hereinabove with respect to a motion for a new trial.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Compiler's Notes

The amendment of Rule 59 by Supreme Court Order No. 10750-9 designated this former Rule 59(e) as Rule 59(f).

Amendments

The amendment of September 7, 1965 added a second paragraph which read: "Motions provided by this subdivision shall be heard and determined within the time provided by Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for a new trial."

The amendment of May 21, 1969 added "and may be combined with the motion for a new trial herein provided for" to the first sentence; substituted the second sentence for the former second paragraph added in 1965; and made changes in phraseology.

Additur

This rule did not give the district court

power to order an additur to a condemnation award as a condition of denying motion for new trial. *State Highway Commission v. Schmidt*, 143 M 505, 391 P 2d 692.

Time Limit

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment, combined with a motion for a new trial filed on September 28, 1965 was a motion contemplated by this rule and Rule 52(b) and was not governed by the time limits of section 93-5606. *State ex rel. Rozan v. District Court of Sixteenth Judicial District*, 147 M 532, 416 P 2d 19, 21.

Untimely Order

Order granting motion to alter or amend judgment was void where hearing was not held within ten days after service as required by this rule; time and procedural limitations for motions subsequent to judgment set out in this rule are mandatory. *Armstrong v. High Crest Oils, Inc.*, — M —, 520 P 2d 1081.

Rule 60. Relief from judgment or order.

(b) **MISTAKES—INADVERTENCE—EXCUSABLE NEGLIGENCE—NEWLY DISCOVERED EVIDENCE—FRAUD, ETC.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) when a defendant has been personally served, whether in lieu of publication or not, not more than

60 days after the judgment, order or proceeding was entered or taken, or, in a case where notice of entry of judgment is required by Rule 77(d), not more than 60 days after service of notice of entry of judgment. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representative, at any time within 180 days after the rendition of any judgment in such action, to answer to the merits of the original action. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as may be required by law, or to set aside a judgment for fraud upon the court.

History: En. Sec. 60, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of August 1, 1965 substituted "within 60 days when a defendant has been personally served, whether in lieu of publication or not, calculated from the date of service of notice of entry of the judgment or order or action taken in the proceeding" for "not more than one year after the judgment, order or proceeding was entered or taken" after "for reasons (1), (2), and (3)" in the second sentence; and inserted the third sentence.

The amendment of September 29, 1967 rewrote the second sentence; and substituted "required" for "provided" in the last sentence.

Commission Note to August 1, 1965 Amendment

The purpose of this amendment is to make the Montana practice correspond to practice under the last sentence of R. C. M. 1947, § 93-3905 (which was repealed with the adoption of the Rules of Civil Procedure), as construed in *Smith v. Collis*, 42 Mont. 350, 365-370 (1910). The time within which the motion may be made is shortened, but considered adequate.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

The federal rule measures the time for the motion for reasons (1), (2), and (3) from time the "judgment, order, or proceeding was entered or taken." The Montana rule measures the time from the "date of service of entry of the judgment or order or action taken"; but Rule 77(d), requiring notice of entry, is confined to judgments in actions in which an appearance has been made. This amendment, using the federal rule language adjusted

to the requirements of Montana Rule 77(d), is for the purpose of avoiding ambiguity and litigation as to what, if any, time limit is imposed in cases of orders, and proceedings, and judgments where no appearance has been made.

Change of Counsel

Motion to have judgment vacated as to date and redated so as to permit moving party to file exceptions to findings or take other steps counsel deemed necessary for protection of client was improperly denied, and was abuse of discretion where moving party had inadequate time in which to obtain present counsel when conflict of interest arose with prior counsel. *Schmidt v. Lloyd*, 152 M 158, 447 P 2d 485.

Discretion of Court

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by M. R. Civ. P., Rule 55(b)(2), and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment under M. R. Civ. P., Rule 55(c). *Williams v. Superior Homes, Inc.*, 148 M 38, 417 P 2d 92, 94.

Slight abuse of discretion in refusing to set aside default judgment for "mistake, inadvertence, surprise, or excusable neglect" is sufficient to justify reversal, and when motion to vacate default judgment is supported by showing which leaves court in doubt or upon which reasonable minds might reach different conclusions, the doubt should be resolved in favor of the motion. *Uffelman v. Labbit*, 152 M 238, 448 P 2d 690.

Excusable Neglect

Defendant's contention that "personal problems drove all thought of lesser problems from his mind" was not sufficient to set aside a default judgment under sub-

section 1 of this section. *Dudley v. Stiles* 142 M 566, 386 P 2d 342.

Grant of new trial pursuant to Rule 59(a) to permit plaintiff to give additional testimony on damages that had been omitted by excusable neglect was not improper, notwithstanding that such relief should have been given under this section, where no intervening rights had attached in reliance upon judgment and no actual injustice would ensue. *John J. Ming, Inc. v. District Court*, 155 M 84, 466 P 2d 907.

Where attorney for defendant had three other active files under same defendant's name and inadvertently filed complaint in one of the other files, with result that answer was not filed in time and plaintiff took judgment by default, a motion pursuant to clause (1) stating the facts and that there was a meritorious defense was adequate to set aside default judgment without verification and without affidavit of merit. *Keller v. Hanson*, 157 M 307, 485 P 2d 705.

Failure to Appeal

After motion to set aside judgment on grounds of fraud was denied and evidence of fraud was rejected by the court, plaintiff's remedy was to appeal the denial, and his failure to do so rendered the decision res judicata and barred the filing of a second action to litigate the same claim or issues. *Kamp Implement Co. v. Amsterdam Lumber, Inc.*, — M —, 533 P 2d 1072.

Failure to File in Time

Defendant's motion to vacate default judgment was properly denied under this rule where the motion was not filed until more than 480 days after the entry of judgment despite fact that defendant was served with neither summons nor complaint; filing of motion to vacate default judgment under this rule did not constitute a selection of remedies and movant, after denial of motion, was still free to bring an independent action to vacate the judgment for failure to receive service which action would not be subject to the 180 day limitation contained in this rule. *Thomas v. Savage*, 161 M 192, 505 P 2d 118.

Fraudulently Obtained Judgments

Time within which trial court could set aside judgment on basis of fraud upon the court depended upon equity and discretion, not time limitation of this rule. In re *Bad Yellow Hair*, — M —, 509 P 2d 9.

Judgment Obtained by Fraud

Court of equity has inherent power, independent of statute, to vacate judgment obtained by fraud in violation of last sentence of Rule 60(b) even though party

seeking relief was not necessary party in original action and motion to vacate was not made within liberal time limits prescribed by rule but was nevertheless timely considering that aggrieved party engaged attorney to file motion to vacate within thirty days after discovery of existence of judgment. *Selway v. Burns*, 150 M 1, 429 P 2d 640.

In quiet title action, district court properly denied motion to set aside default decree where moving party had no color of title; under this section default judgment will be set aside for excusable neglect only if movant is able to show good defense on merits. *Diamond Investment Co. v. Geagan*, 154 M 122, 460 P 2d 760.

Meritorious Defense

Answer and counterclaim need not be verified when submitted with motion under this rule which stated generally that there was a meritorious defense, and there is no longer a requirement for an affidavit of merit. *Keller v. Hanson*, 157 M 307, 485 P 2d 705.

Mistake of Law

Mistaken belief of party, against whom default judgment was taken, as to legal effect of contract with adverse party was mistake of law, rather than mistake of fact, and was not such a "mistake" as would support vacating the default. *Uffelman v. Labbit*, 152 M 238, 448 P 2d 690.

No Substitute for Appeal

Defendants who had filed an appeal but never perfected it, could not use this rule to raise an issue which had been presented at the original proceedings, or to relitigate matters previously determined. *Sheridan v. Martinsen*, — M —, 523 P 2d 1392.

Probate Matters

Final decree of distribution and discharge in probate will not be set aside on ground of inadvertence or fraud either under statute or Rule 60(b) in absence of manifest abuse of court's discretion in case where moving party had every opportunity to protect his claim in probate and failed to do so. *Werning v. McFarland*, 149 M 137, 423 P 2d 851.

Reasonable Time

County commissioners' motion to dismiss peremptory writ of mandate was made within a reasonable time where it was made within the time allowed for an appeal and promptly after commissioners learned that statutes controlling dispute had been amended. *Snyder v. McKinley*, — M —, 521 P 2d 919.

Scope of Rule

Contention that default judgment was erroneous on its face and should be set

aside because the judgment and an exhibit attached to the complaint contained inaccurate and erroneous language was outside scope of rule and could not be raised thereunder. *Uffleman v. Labbit*, 152 M 238, 448 P 2d 690.

Voidable Judgment

This rule does not apply to voidable judgments. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

This rule has no application to prematurely entered default judgments since it applies to void and not voidable judgments. *Sowerwine v. Sowerwine*, 145 M 81, 399 P 2d 233.

(c) **TIME FOR HEARING AND DETERMINING MOTIONS.** Motions provided by subdivisions (a) and (b) of this rule shall be heard and determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment.

History: En. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 substituted "Rule 59" for "section 93-5606 of the 1947 Revised Codes of Montana" and "trials" for "trial"; and added "and amendment of judgment."

Rule 61. Harmless error.

Clerk's Error

Omission of clerk of court to require affidavit of amount due under Rule 55(b) (1) before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. *Interstate Counseling Service v. Emeline*, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Contributory Negligence

Submitting issue of contributory negligence to jury was harmless error in light of substantial evidence showing that defendant was not negligent and substantial evidence that even if defendant was negligent plaintiff was not injured in accident or injury was not result of defendant's negligence. *Brown v. Reel*, 148 M 381, 421 P 2d 454.

In a wrongful death action by father of eight and one-half year old boy, who, while riding a bicycle, was struck and killed by automobile, court's instruction that deceased boy was incapable of contributory negligence and court's refusal of defendant's offered instruction on con-

Waiver of Right to Relief

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with M. R. Civ. P., Rule 55(b) and no relief different from that demanded in the complaint was granted in violation of Rule 54(c), an appeal on those grounds was dismissed by the supreme court on its own motion where no application to set aside the default or judgment was made under this rule. *Sowerwine v. Sowerwine*, 148 M 195, 418 P 2d 859, 861.

References

Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151; *Wolfe v. Northern Pacific Ry. Co.*, 147 M 29, 409 P 2d 528.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Since section 93-5606, R. C. M. 1947, is being superseded because of changes in Rules 46, 52 and 59, the change in Rule 60(c) is likewise required.

tributory negligence was not reversible error, irrespective of question of boy's capacity, since there was no substantial credible evidence of contributory negligence in fact on part of deceased boy. *Graham v. Rolandson*, 150 M 270, 435 P 2d 263.

Joint Enterprise

Court's rulings with respect to issue of joint enterprise, if error, was harmless error, since driver was sole proximate cause of accident in which passenger suing owner of cattle was injured when car struck cattle on highway. *Ratcliff v. Murphy*, 150 M 31, 430 P 2d 627.

Poll of Jury

Lower court abused discretion in granting new trial based solely on ground that it had erred in refusing request for poll of jury since error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that in response to question by judge, foreman of jury advised him they had agreed upon verdict, and that following reading of verdict

signed by foreman, judge inquired of jury if it was true verdict of at least eight of them and jury answered in affirmative. *Martello v. Darlow*, 151 M 232, 441 P 2d 175.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 62. Stay of proceedings to enforce a judgment.

(a) Superseded—M. R. App. Civ. P., Rule 7.

Supersession

This section (Sec. 62, Ch. 13, L. 1961), relating to stay of proceedings upon entry

of judgment, is superseded by M. R. App. Civ. P., Rule 7.

(d) Superseded—M. R. App. Civ. P., Rule 7.

Supersession

This section (Sec. 62, Ch. 13, L. 1961), relating to stay of proceedings upon ap-

peal, is superseded by M. R. App. Civ. P., Rule 7.

(e) STAY IN FAVOR OF THE STATE OF MONTANA OR AGENCY THEREOF.**Eminent Domain Proceeding**

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under section 93-9918 had issued, the appeal stayed the

judgment although no bond was filed as required by section 93-8011, since under this rule no security was required from the state. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS**Rule 68. Offer of judgment.****Rule 65. Injunctions.****References**

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

Rule 68. Offer of judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

History: En. Sec. 67, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 added the last sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 68, as amended 1966.

This logical extension of the concept of offer of judgment is suggested by the common admiralty practice of determining liability before the amount of liability is determined.

Fraud on Court

Although proper procedure was followed under rule providing for offer of judgment, conduct of parties in perpetrating fraud on court required that judgment be vacated on motion of aggrieved beneficiary who was not party to suit against estate. *Selway v. Burns*, 150 M 1, 429 P 2d 640.

Offer in Same Amount as Subsequent Judgment

Costs of suit were properly awarded to defendant where defendant made an offer of judgment in the exact amount that was eventually recovered by plaintiff. *Riefflin v. Hartford Steam Boiler Inspection & Ins. Co.*, — M —, 521 P 2d 675.

IX. APPEALS

Rule 72. Appeal from a district court to the supreme court.

Rule 72. Appeal from a district court to the supreme court.

When an appeal is permitted by law from a district court to the supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Civil Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Civil Procedure.

History: En. Sec. 71, Ch. 13, L. 1961, amd. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Amendments

The 1965 amendment rewrote this section. For previous text, see parent volume.

Advisory Committee's Note

Subdivision (a) of Rule 41, M. R. App. Civ. P. merely adapts the Montana Rules of Civil Procedure to these, Appellate Rules.

X. DISTRICT COURTS AND CLERKS

Rule 77. District courts and clerks.

Rule 77. District courts and clerks.

(b) TRIALS AND HEARINGS—ORDERS IN CHAMBERS.

Time for Hearing

Notwithstanding that hearing on defendant's motion for summary judgment was held one day prior to scheduled date, such procedure was permissible under this

section since hearing was held with consent of both court and counsel. *Israelson v. Mountain Tractor Co.*, 155 M 69, 467 P 2d 149.

(d) NOTICE OF ENTRY OF JUDGMENT SERVED.

Notice of Entry of Judgment Omitted

The date of service of notice of entry of judgment is the arbitrary point in time from which the time limits for appeal begin to run. If no notice of entry of judgment has been served upon the losing party, the right to appeal has not expired. *Haywood v. Sedillo*, — M —, 535 P 2d 1014.

Sufficiency of Notice

Notice sent to plaintiff's attorney that judgment had been entered in favor of defendant and stating that a copy of the order adjudging a dismissal with prejudice was attached, was sufficient for compliance with this rule even though a copy of the order was not actually attached. *Jackson v. Tinker*, 161 M 51, 504 P 2d 692.

(e) **TRANSMITTAL OF FILE ON REMOVAL.** Upon the filing of a copy of the petition for removal of any state district court action to the district court of the United States, district of Montana, and a request in writing therefor, the clerk of such state district court shall promptly deliver to the clerk of court of the district court of the United States, district of Montana, all papers then in the original state court file, or theretofore issued and subsequently filed and shall keep in the state court file only the copy of the petition for removal and such papers as were filed with the request for removal.

History: En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

for "subsequently file"; and substituted "copy of the petition for removal" and "request for removal" near the end of the rule for "notice of removal."

Amendments

The 1971 amendment substituted "the filing of a copy of the petition for removal" for "being served with a notice of the removal" at the beginning of the rule; inserted "and a request in writing therefor"; inserted "and subsequently filed" after "theretofore issued"; substituted "shall keep in the state court file"

Advisory Committee's Note

To define procedure and avoid unnecessary duplication of papers in state and federal court files. The proposed amendment correlates with Rule 10, Revised Rules of Procedure of the United States District Court for the District of Montana effective January 1, 1968.

XI. GENERAL PROVISIONS

Rule 86. Effective date—Statutes superseded.

Rule 81. Applicability in general.

(a) SPECIAL STATUTORY PROCEEDINGS.

Action To Remove Administrator

In statutory action for removal of administrator for misappropriation of funds of estate, administrator could be examined as adverse witness under Rule 43 notwithstanding provisions of Rule 81. In re Estate & Guardianship of Wyman, 149 M 525, 429 P 2d 629.

Civil Procedure were not applicable to proceeding to review actions and rates of Public Service Commission under section 70-128. Public Service Comm. of Montana v. District Court, — M —, 511 P 2d 334.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

Review of Public Service Commission Rates

Under this rule, Montana Rules of

(b) APPEALS TO DISTRICT COURTS.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

(c) RULES INCORPORATED INTO STATUTES.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 83. Rules by district courts.

Briefs Required on Preliminary Motion

Trial court rule requiring filing of briefs in support of preliminary motion is proper exercise of authority under this

rule and may be enforced by summary denial of motion where brief has not been filed. Hansen v. Kiernan, 159 M 448, 499 P 2d 787.

Rule 86. Effective date—Statutes superseded.

(a) **EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.** These Rules became effective January 1, 1962. In accordance with Chapter 16, Laws of 1963, proposed amendments to these rules shall be first prepared by the advisory committee, which shall distribute copies thereof to the bench and resident bar of the state for their consideration and suggestions. Submission of proposed amendments to the court shall be made by the advisory committee only after the advisory committee has considered suggestions received from the bench and bar. Submissions to the court shall be noticed by the court by mailing notice, containing copies of the submitted proposals to all district judges and resident attorneys licensed to practice in the Montana courts as shown by the records of the clerk of the court, and the court will receive written suggestions and objections within the time fixed in the notice, which shall be not less than ninety (90) days thereafter. Oral hearings on proposals will be held only on special order of the court. Amendments adopted by the court will become effective on January 1 unless a different time be fixed in the order.

The court will annually, at least thirty (30) days prior to January 1, cause to be published all amendments to these rules which are to become effective on the succeeding January 1, and transmit the same to all judges and resident lawyers of the state. Such rules as are to become effective at times other than January 1 will be published and transmitted at least thirty (30) days prior to their effective date. These rules and amendments govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the district court their application in a particular action pending when the rules or amendments take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment divided subdivision (a) into two paragraphs; inserted the second, third, fourth, fifth, and sixth sentences of the first paragraph and the first and second sentences of the second paragraph; substituted "These rules and amendments" for "They" at the beginning of the third sentence of the second paragraph; inserted "or amendments" after "particular action pending when the rules" in the latter part of the third sentence of the second paragraph; and substituted "became effective" for "will take effect" in the first sentence of the first paragraph.

Relation Back of Complaint

Question of relation back of complaint amended after adoption of Rules is governed by provisions of Rules even though action originated prior to effective date of Rules in absence of finding by court hav-

ing jurisdiction that Rules should not control. *Rozan v. Rosen*, 150 M 121, 431 P 2d 870.

Retroactive Application

District court had the power to consider motion under procedure that was in effect when the motion was filed where the court believed application of amended rule would work an injury. *State ex rel. Rozan v. District Court of Sixteenth Judicial District*, 147 M 532, 416 P 2d 19, 21.

Rule 4B(1), M. R. Civ. P., applied to act of alleged malpractice occurring in Montana prior to effective date of the Montana Rules of Civil Procedure and doctor who had not resided in Montana since the effective date of the rules could properly be served with process, under Rule 4D(3), in California. *State ex rel. Johnson v. District Court of Fourth Judicial District*, 148 M 22, 417 P 2d 109, 110.

The giving effect to the service of summons provisions of Montana Rules of Civil Procedure, Rule 4, subd. B, when

the operative facts of the case to which the rule applied had taken place prior to the effective date provided in this section, was not a prohibited retroactive application of Rule 4, subd. B, within the meaning of section 12-201. *Weber v. Hydroponics, Inc.*, 226 F Supp 117, 118.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

(b) **STATUTES SUPERSEDED.** Upon the taking effect of these rules or amendments thereto all statutes and parts of statutes in conflict therewith and the statutes listed in Tables B and C are superseded in respect of practice and procedure in the district courts.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment inserted "or amendments thereto" after "these rules"; and made another minor change in phraseology.

Table A. Special statutory proceedings under Rule 81.

Compiler's Notes

A number of sections referred to in this table have been repealed.

Sections 23-926 to 23-928 were repealed by Sec. 248, Ch. 368, Laws of 1969; for similar provisions, see sec. 23-3316.

Sections 23-2301 to 23-2304 were repealed by Sec. 248, Ch. 368, Laws of 1969; for similar provisions, see secs. 23-4101, 23-4104 to 23-4109.

Section 38-606 was repealed by Sec. 1, Ch. 310, Laws of 1969; for present law, see sec. 69-6401 et seq.

Sections 38-701 to 38-711 were repealed by Sec. 15, Ch. 112, Laws of 1963, Sec. 82, Ch. 266, Laws of 1963, and Sec. 10, Ch. 213, Laws of 1963; for present law, see sec. 80-2404.

Sections 38-801 to 38-819 were repealed by Sec. 82, Ch. 266, Laws of 1963, Sec. 10, Ch. 213, Laws of 1963, and Sec. 101, Ch. 199, Laws of 1965; for present law, see secs. 80-2303 to 80-2312.

Sections 38-1101 to 38-1112 were repealed by Sec. 1, Ch. 230, Laws of 1959, and Sec. 101, Ch. 199, Laws of 1965; for present law, see secs. 80-2501 to 80-2503.

Section 40-3633 was repealed by Sec. 37, Ch. 362, Laws of 1969; for present law, see sec. 40-3664.

Section 66-1004 was repealed by Sec. 43, Ch. 338, Laws of 1969.

Sections 69-307 to 69-310 and 69-313 were repealed by Sec. 28, Ch. 264, Laws of 1955, and Sec. 223, Ch. 197, Laws of

1967; for present provisions, see secs. 69-4301 to 69-4317.

Section 69-522 was repealed by Sec. 223, Ch. 197, Laws of 1967; for present law, see sec. 69-4418.

Section 69-1335 was repealed by Sec. 223, Ch. 197, Laws of 1967; for similar provisions, see secs. 69-4816 and 69-4907.

Section 75-1634 was repealed by Sec. 496, Ch. 5, Laws of 1971; for present law, see sec. 75-8205.

Section 75-2901 was repealed by Sec. 496, Ch. 5, Laws of 1971; for present law, see sec. 75-6303.

Sections 75-3001 and 75-3002 were repealed by Sec. 16, Ch. 262, Laws of 1971.

Sections 80-810 and 80-815 to 80-817 were repealed by Sec. 82, Ch. 206, Laws of 1963, Sec. 242, Ch. 147, Laws of 1963, and Sec. 101, Ch. 199, Laws of 1965; for similar provisions, see sec. 80-2202 et seq.

Sections 80-1002 and 80-1003 were repealed by Sec. 101, Ch. 199, Laws of 1965.

Section 84-5617 was repealed by Sec. 32, Ch. 140, Laws of 1969; for a similar provision, see sec. 84-5606.25.

Section 94-101-1 to 94-101-33 were repealed by Sec. 2, Ch. 196, Laws of 1967; for new law, see secs. 95-2701 to 95-2713, 95-2715, and 95-2716.

Sections 94-901-1 to 94-901-18 were repealed by Sec. 3, Ch. 208, Laws of 1961; for new provisions, see secs. 93-2601-41 to 93-2601-82.

Table B. List of Rules Superseding Statutes.

Statutes Superseded	
Rule	(R. C. M. 1947, sections)
4D	16-809, 93-3008, 93-3011, 93-3012
41(e)	93-3002
52(a)	93-5302, 93-5303, 93-5411
52(b)	93-5305, 93-5306, 93-5307

59(a), (b), (c), (d)

-----93-5605, 93-5606

History: En. Sec. 82, Ch. 13, L. 1961; amd. Sec. 3, Ch. 14, L. 1963; amd. Sec. 2, Ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The 1965 amendment added sections 16-809, 93-3008, 93-3011, and 93-3012 to the

list of sections superseded by Rule 4 D; and added section 93-3002 to the list of sections superseded by Rule 41(e).

The 1969 amendment added section 93-5302 to the list of sections superseded by Rule 52(a); inserted sections 93-5305, 93-5306, and 93-5307 as being superseded by Rule 52(b); added section 93-5606 to the list of sections superseded by Rule 59(d).

Table C. List of Statutes Superseded by Rules.
Statutes Superseded
(R. C. M. 1947, sections)

	Rules
93-3002	41(e)
93-3008	4D
93-3011	4D
93-3012	4D
93-5302	52(a)
93-5305	52(b)
93-5306	52(b)
93-5307	52(b)
93-5606	59(d)
16-809	4D

History: En. Sec. 83, Ch. 13, L. 1961; amd. Sec. 4, Ch. 14, L. 1963; amd. Sec. 3, ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The 1965 amendment added sections 16-809, 93-3002, 93-3008, 93-3011, and 93-3012 to the table.

The 1969 amendment added sections 93-5302, 93-5305 to 93-5307 and 93-5606 to the table.

CHAPTER 2901—SUPPORT OF CHILDREN BORN OUT OF WEDLOCK
(Repealed—Section 31, Chapter 512, Laws of 1975)

93-2901-1 to 93-2901-11. Repealed.

Repeal

Sections 93-2901-1 to 93-2901-11 (Secs. 1 to 11, Ch. 233, L. 1963), relating to sup-

port of children born out of wedlock, were repealed by Sec. 31, Chapter 512, Laws 1975.

CHAPTER 3001

MONTANA RULES OF APPELLATE CIVIL PROCEDURE

I. APPLICABILITY OF RULES

- Rule
1. Scope of rules—From what judgment or order an appeal may be taken.
 2. What the court may review on an appeal from a judgment.
 3. Suspension of the rules.

II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

4. How taken.
 - (a) FILING THE NOTICE OF APPEAL.
 - (b) JOINT APPEALS.
 - (c) CONTENT OF THE NOTICE OF APPEAL.
 - (d) SERVICE OF NOTICE OF APPEAL.
5. Time for filing notice of appeal.
6. Undertaking for costs on appeal.
 - (a) [FORM OF UNDERTAKING—TIME FOR FILING.]
7. Stay of judgment or order pending appeal.
 - (a) [STAY UPON ENTRY OF JUDGMENT—UNDERTAKING.]
 - (b) [SALE OF PERISHABLE PROPERTY.]
 - (c) [CASES IN WHICH STAY OF PROCEEDINGS NOT ALLOWED.]
8. Sureties and their justification.
 - (a) [LIABILITY OF SURETY—ENFORCEMENT.]
 - (b) [JUSTIFICATION OF SURETIES.]
9. The record on appeal.
 - (a) COMPOSITION OF THE RECORD ON APPEAL.
 - (b) THE TRANSCRIPT OF PROCEEDINGS—DUTY OF APPELLANT TO ORDER—NOTICE TO RESPONDENT IF PARTIAL TRANSCRIPT IS ORDERED—COSTS OF PRODUCING.
 - (c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE.
 - (d) AGREED STATEMENT AS THE RECORD ON APPEAL.
 - (e) CORRECTION OR MODIFICATION OF THE RECORD.
 - (f) [FINDINGS OF FACT AND CONCLUSIONS OF LAW.]
10. Transmission of the record.
 - (a) TIME FOR TRANSMISSION—NUMBER OF COPIES OF TRANSCRIPT—DUTY OF APPELLANT.

RULES OF APPELLATE CIVIL PROCEDURE

Rule

- (b) DUTY OF CLERK TO TRANSMIT THE RECORD.
 - (c) EXTENSION OF TIME FOR TRANSMISSION OF THE RECORD—REDUCTION OF TIME.
 - (d) RETENTION OF THE RECORD IN THE DISTRICT COURT BY ORDER OF COURT.
 - (e) STIPULATION OF PARTIES THAT PARTS OF THE RECORD BE RETAINED IN THE DISTRICT COURT.
 - (f) RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT.
11. Docketing the appeal—Filing of the record.
- (a) DOCKETING THE APPEAL.
 - (b) FILING OF THE RECORD.
 - (c) DISMISSAL FOR FAILURE OF APPELLANT TO CAUSE TIMELY TRANSMISSION OR TO DOCKET APPEAL.
12. Effect of dismissal.
13. Acts of executors, administrators or guardians valid when appointment vacated.
14. Ruling against respondent may be reviewed.
15. Remedial powers of the supreme court.
16. Remittitur must be certified to the clerk of the district court.

III. ORIGINAL PROCEEDINGS—EXTRAORDINARY WRITS

17. Acceptance and manner of conducting.
- (a) WHEN ACCEPTED.
 - (b) HOW COMMENCED AND CONDUCTED.
 - (c) APPLICATIONS—WHEN FILED.
 - (d) APPLICATIONS—WHAT TO CONTAIN.
 - (e) APPLICATIONS—HOW AND WHEN PRESENTED.
 - (f) ISSUANCE OF ALTERNATIVE WRIT OR ORDER TO SHOW CAUSE.
 - (g) BRIEFS.
 - (h) HEARING—WHEN HAD.

IV. APPEALS IN FORMA PAUPERIS

18. Applications and manner of proceeding.
- (a) APPLICATION TO DISTRICT COURT.
 - (b) APPLICATION TO THE SUPREME COURT.
 - (c) FORM OF BRIEFS, APPENDICES AND OTHER PAPERS.

V. GENERAL PROVISIONS

19. Record of commissions and oaths.
- (a) COMMISSIONS AND OATHS.
 - (b) MINUTES OF COURT.

RULES OF APPELLATE CIVIL PROCEDURE

Rule

20. Filing and service.

- (a) FILING.
- (b) SERVICE OF ALL PAPERS REQUIRED.
- (c) MANNER OF SERVICE.
- (d) PROOF OF SERVICE.

21. Computation and extension of time.

- (a) COMPUTATION OF TIME.
- (b) EXTENSION OF TIME.
- (c) ADDITIONAL TIME AFTER SERVICE BY MAIL.

22. Motions.

23. Briefs.

- (a) BRIEF OF THE APPELLANT.
- (b) BRIEF OF THE RESPONDENT.
- (c) REPLY BRIEF.
- (d) REFERENCES IN BRIEFS TO PARTIES.
- (e) REFERENCES IN BRIEFS TO THE RECORD.
- (f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC.
- (g) LENGTH OF BRIEFS AND COSTS.
- (h) BRIEFS IN CASES INVOLVING CROSS APPEALS.

24. Brief of an amicus curiae.

25. The appendix to the briefs.

- (a) USE OF AN APPENDIX.
- (b) CONTENTS OF THE APPENDIX.
- (c) ARRANGEMENT OF THE APPENDIX.
- (d) REPRODUCTION OF EXHIBITS.

26. Filing and service of briefs.

- (a) TIME FOR FILING BRIEFS.
- (b) NUMBER OF COPIES TO BE FILED AND SERVED.
- (c) CONSEQUENCES OF FAILURE TO FILE BRIEFS.

27. Form of briefs, the appendix, motions and other papers.

- (a) FORM OF BRIEFS, APPENDICES AND SEPARATE VOLUMES OF EXHIBITS.
- (b) TYPEWRITTEN PAPERS AND MOTIONS.
- (c) FIRST PAGE AND COVER.

28. Prehearing conference.

29. Oral argument.

- (a) NOTICE OF HEARING—POSTPONEMENT.
- (b) TIME ALLOWED FOR ARGUMENT.
- (c) ORDER AND CONTENT OF ARGUMENT.
- (d) CROSS AND SEPARATE APPEALS.

RULES OF APPELLATE CIVIL PROCEDURE

Rule

- (e) NONAPPEARANCE OF COUNSEL—FAILURE TO FILE BRIEFS.
 - (f) SUBMISSION ON BRIEFS.
 - (g) USE OF PHYSICAL EXHIBITS AT HEARING—REMOVAL.
30. Entry and notice of orders and judgments.
- (a) ENTRY AND NOTICE.
31. Interest on judgments.
32. Damages for appeal without merit.
33. Costs.
- (a) COSTS ON APPEAL.
 - (b) COSTS OF BRIEFS AND APPENDICES.
 - (c) OTHER COSTS TAXABLE.
 - (d) COSTS IN ORIGINAL PROCEEDINGS.
 - (e) UNNECESSARY COSTS.
 - (f) NOTATION BY CLERK.
34. Petitions for rehearing.
35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.
- (a) NOTICE AND COPY OF DECISION TO BE FURNISHED.
 - (b) REMITTITUR—WHEN ISSUED—WHEN COPY OF OPINION TO ACCOMPANY.
 - (c) MANDATE FROM UNITED STATES SUPREME COURT—PROCEDURE THEREON.
36. Voluntary dismissal.
37. Substitution of parties.
- (a) DEATH OF A PARTY.
 - (b) SUBSTITUTION FOR OTHER CAUSES.
 - (c) PUBLIC OFFICERS—DEATH OR SEPARATION FROM OFFICE.
38. Cases involving constitutional questions where the state is not a party.
39. Calendar—Withdrawal of records.
- (a) PLACING CAUSES UPON CALENDAR.
 - (b) SETTING CAUSES FOR ARGUMENT.
 - (c) ADVANCEMENT OF CAUSES.
 - (d) PERMISSION TO TAKE RECORD FROM CLERK'S OFFICE.
40. Appeals from injunction orders.
41. Statutes and rules amended.

Rule

42. Applicability in general.

- (a) SPECIAL STATUTORY PROCEEDINGS.
- (b) APPEALS TO DISTRICT COURTS.
- (c) RULES INCORPORATED INTO STATUTES.

43. Title—Effective date—Statutes superseded.

- (a) TITLE.
- (b) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.
- (c) STATUTES AND RULES SUPERSEDED.

Appendix of forms.

Table A. List of statutes and rules superseded or amended.

- B. List of rules of appellate civil procedure superseding, in whole or in part, or amending, statutes and rules.
- C. List of statutes and rules superseded, in whole or in part, or amended, by designated rules of appellate civil procedure.

I. APPLICABILITY OF RULES

- Rule 1. Scope of rules—From what judgment or order an appeal may be taken.
- 2. What the court may review on an appeal from a judgment.
 - 3. Suspension of the rules.

Rule 1. Scope of rules—From what judgment or order an appeal may be taken.

These rules govern procedure in appeals in civil cases to the supreme court of Montana from Montana district courts and original proceedings in the supreme court of Montana. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent.

A party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

- (a) From a final judgment entered in an action or special proceeding commenced in a district court, or brought into a district court from another court or administrative body.
- (b) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial when the county designated in the complaint is not the proper county; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judg-

ments or orders, in actions for partition as determine the rights and interests of the respective parties and direct partition to be made. In any of the cases mentioned in this subdivision the supreme court, or a justice thereof, may stay all proceedings under the order appealed from, on such conditions as may seem proper.

(c) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

All questions raised on an order overruling a motion for a new trial or on an order changing or refusing to change the place of trial under R. C. M. 1947, section 93-2906 subdivisions 2, 3 or 4 thereof may be raised and reviewed on an appeal from the judgment.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in clause (b), inserted "or refusing to permit an action to be maintained as a class action;" near the beginning of the first sentence.

Advisory Committee's Note

Section 93-8003, R. C. M. 1947, is restated and clarified. The effect of section 93-8004 (3), referring to "an order changing or refusing to change a place of trial," is limited by providing for appeals from orders re change of venue only in cases where the motion for change is based upon subdivision 1 of section 93-2906.

Since these rules only apply to appeals from district courts to the Montana supreme court, the provisions of sections 93-8001 and 93-8002 are not superseded in so far as they refer to appeals in actions in police or justice's courts: a judgment or order in a civil action in police or justice's courts, except when expressly made final, may be reviewed as prescribed in R. C. M. 1947, sections 93-7901 to 93-7908.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

This adds to appealable orders an order under Rule 23(c)(1), Montana Rules of Civil Procedure, refusing to permit a class

action to be maintained as such. It does not permit appeal from an order permitting a class action to be maintained as such. See Advisory Committee's Note to Rule 23 of the Montana Rules of Civil Procedure.

Class Action

Writ of supervisory control granting relief from district court order permitting maintenance of class action was not justified since the order was subject to alteration or amendment as the matter progresses and since the question can be considered on appeal from final judgment. *State ex rel. Anaconda Aluminum Co. v. District Court*, 158 M 228, 490 P 2d 351.

Denial of Change of Venue

Specification of error arising from trial court's order denying motion for change of venue was not properly before supreme court because timely appeal was not made from order as required by rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

Denial of Motion

Where district court exceeded its jurisdiction in denying motion to quash summons and dismiss action where the summons had not been served and returned within the three years required by M. R. Civ. P., Rule 41(e) the order was not appealable under this rule. *State ex rel. Belwin, Inc. v. Davison*, 148 M 345, 420 P 2d 842, 844.

Writ of supervisory control was proper where lessor's motion to dismiss sub-

lessees' action for breach of lease agreement, to which sublessees were not parties, was denied by the district court, the order denying the motion to dismiss not being appealable under this rule. *State ex rel. Buttrey Foods, Inc. v. District Court*, 148 M 350, 420 P 2d 845, 847.

Denial of Writ of Assistance

Although denial of writ of assistance, placing purchaser at sheriff's sale under mortgage foreclosure into possession of lands involved, by district court was appealable under rule either as "an order directing * * * surrender of property" or as "any special order made after final judgment," writ of supervisory control to compel the district court to issue writ of assistance was available as remedy since remedy by appeal was neither speedy nor adequate. *State ex rel. Foss v. District Court, Fourth Judicial District*, 152 M 73, 446 P 2d 707.

Dismissal of Action

The effect of a district court's order dismissing the action was substantially the same as a judgment for defendants and therefore appealable even though no formal judgment was entered. *Prentice Lumber Co. v. Hukill*, — M —, 504 P 2d 277, distinguishing *Payne v. Mountain States Telephone & Telegraph Co.*, 142 M 406, 385 P 2d 100, and *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d

1; *Beach v. Destination Enterprises, Inc.*, — M —, 526 P 2d 1382.

Order Denying Summary Judgment

Although order denying summary judgment is nonappealable at time it is made because of its interlocutory character, it is nonetheless reviewable under appellate rule providing that all nonappealable intermediate orders or decisions properly excepted or objected to which involve merits or necessarily affect judgment are reviewable on subsequent appeal from final judgment. *Brown v. Midland Nat. Bank*, 150 M 422, 435 P 2d 878.

Standing As Aggrieved Party

Appellant, who first raised issue of the zoning classification of property involved in condemnation proceeding, lacked standing as "a party aggrieved" to complain of the state's subsequent emphasis on the zoning of the property as misleading jury into reaching erroneous verdict. *State Highway Commission v. Vaughn*, 155 M 277, 470 P 2d 967.

Writ of Supervisory Control

Although orders of district court striking two defenses from relator's answer and granting plaintiff summary judgment on issue of liability were not directly appealable under this section, writ of supervisory control was available as remedy. *State ex rel. Great Falls Nat. Bank v. District Court*, 154 M 336, 463 P 2d 326.

DECISIONS UNDER FORMER LAW

Dismissal of Action

An order granting a motion to dismiss was not appealable under former section 93-8003. *Payne v. Mountain States Telephone & Telegraph Co.*, 142 M 406, 385 P 2d 100; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1; both distinguished in 161 M 8, 504 P 2d 277, 279.

Injunctions and Restraining Orders

Order denying county commissioner's motion to quash temporary injunction against use of real property valuations made by private appraisal group and relied on by reclassification officer appointed by commissioners to determine 1965 tax assessment rolls was appealable under

former section 93-8003. *State ex rel. Keast v. Krieg*, 145 M 521, 402 P 2d 405, 19 ALR 3d 396.

Sustaining of Demurrer

Notwithstanding that former statute providing for appeals gave party against whom demurrer was sustained plain and speedy remedy by appeal, court would not dismiss application for supervisory writ where judgment sustaining demurrer also stayed proceedings and expressly accorded losing party right to apply for supervisory writ. *State ex rel. Cave Constr. Co. v. District Court, Third Judicial District*, 150 M 18, 430 P 2d 624.

Rule 2. What the court may review on an appeal from a judgment.

Upon appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision excepted or objected to within the meaning of Rule 46 of the Montana Rules of Civil Procedure, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8022.

Correction of Erroneous Judgment

Case would be remanded to district court for purpose of amending, by incorporating appropriate terms, a judgment which omitted defaulting codefendant who was jointly and severally liable on obligation. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

Denial of Change of Venue

Specification of error arising from trial court's order denying motion for change of venue was not properly before supreme court because timely appeal was not made from order as required by rules. *Sealey v. Majerus*, 149 M 268, 425 P 2d 70.

Objections First Raised on Appeal

In condemnation proceedings by the state highway commission to condemn a right of way for an interstate highway which divided ranch into two large tracts making an underpass necessary, alleged

error of trial court in its preliminary order of condemnation of ordering commission at its own expense to install, construct and maintain the underpass on the ground that the commission had previously agreed to install the underpass, could not be raised for the first time on appeal where the question was not raised at the time of the trial in the lower court. *State ex rel. State Highway Commission v. Wheeler*, 148 M 246, 419 P 2d 492, 496.

Order Denying Summary Judgment

Although order denying summary judgment is nonappealable order at time it is made because of its interlocutory character, it is nonetheless reviewable under appellate rule providing that all nonappealable intermediate orders or decisions properly excepted or objected to which involve merits or necessarily affect the judgment are reviewable on subsequent appeal from final judgment. *Brown v. Midland Nat. Bank*, 150 M 422, 435 P 2d 878.

Rule 3. Suspension of the rules.

In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in Rule 21(b), suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 2 of the Federal Draft. Its purpose is explained by the Federal Advisory Committee's Note. Adjusted to state practice, this purpose is to make clear the power of the supreme court to expedite the determination of cases of pressing concern to the public or to the litigants by prescribing a time schedule other than that provided by the rules. The rule also contains a general authorization to the supreme court to relieve litigants of the conse-

quences of default where manifest injustice would otherwise result. Rule 21(b) prohibits the supreme court from extending the time for taking appeal.

Emergency Restraining Order Denied

Petition by female minor who was denied injunction prohibiting rodeo from refusing to allow her to participate as a bare-back bronc rider, was not such an emergency as to invoke the extraordinary remedies of the supreme court, ex parte, without notice, without bond, and without hearing. *State ex rel. Reno v. District Court*, — M —, 529 P 2d 1407.

II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS**Rule 4. How taken.**

5. Time for filing notice of appeal.
6. Undertaking for costs on appeal.
7. Stay of judgment or order pending appeal.
8. Sureties and their justification.
9. The record on appeal.
10. Transmission of the record.
11. Docketing the appeal—Filing of the record.
12. Effect of dismissal.
13. Acts of executors, administrators or guardians valid when appointment vacated.
14. Ruling against respondent may be reviewed.
15. Remedial powers of the supreme court.
16. Remittitur must be certified to the clerk of the district court.

Rule 4. How taken.

(a) **FILING THE NOTICE OF APPEAL.** An appeal shall be taken by filing a notice of appeal in the district court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(b) **JOINT APPEALS.** If two or more persons are entitled to appeal from a judgment or order of the district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal as a single appellant.

(c) **CONTENT OF THE NOTICE OF APPEAL.** The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment or order appealed from. Form 1 in the Appendix of Forms is a suggested form of notice of appeal.

(d) **SERVICE OF NOTICE OF APPEAL.** The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 3 of the Federal Draft, but excludes references to criminal cases, habeas corpus proceedings and bankruptcy. Nothing other than the filing of a notice of appeal in the district court is required for the perfecting of an appeal. In the interest of providing the supreme court with prompt

notice that its jurisdiction has been invoked, the rule directs the clerk of the district court to forward a copy of the notice of appeal to the clerk of the supreme court. The requirement that the appellant furnish the clerk with the necessary number of copies of the notice of appeal and that the clerk endorse on each copy served the date on which the notice was filed are for the convenience of the clerk and litigants respectively.

DECISIONS UNDER FORMER LAW**Service on Respondent**

Where notice of appeal was not served on the respondent party within six months of the date of judgment, the supreme court could not acquire jurisdiction

even though notice was filed with the district court within the statutory period. *Seiffert v. Police Commission of Helena*, 144 M 52, 394 P 2d 172.

Rule 5. Time for filing notice of appeal.

The time within which an appeal from a judgment or an order must be taken shall be 30 days from the entry thereof, except that in cases where service of notice of entry of judgment is required by Rule 77(d)

of the Montana Rules of Civil Procedure the time shall be 30 days from the service of notice of entry of judgment, but if the state of Montana, or any political subdivision thereof, or an officer or agency thereof is a party the notice of appeal shall be filed within 60 days from the entry of the judgment or order or 60 days from the service of notice of the entry of judgment. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 7 days of the date on which the first notice of appeal was filed, or within the time otherwise provided by this rule, whichever period last expires.

The running of the time for filing a notice of appeal is suspended as to all parties by a timely motion filed in the district court by any party pursuant to the Montana Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this rule commences to run and is to be computed from mailing by the clerk of notice of the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

Upon showing of excusable neglect, the district court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the original time prescribed by this rule.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in the first sentence of the first paragraph, inserted "a judgment or" before "an order"; substituted "except that * * * the time" for "and the time within which an appeal from a judgment must be taken"; deleted "as provided in Rule 77(d) of the Montana Rules of Civil Procedure" after "entry of judgment"; and inserted "or any political subdivision thereof" after "state of Montana."

Advisory Committee's Note

This rule is patterned after Rule 4 of the Federal Draft. (Provisions for appeals in bankruptcy, petitions for impeachment, under the Railway Labor Act, under the Interlocutory Appeals Act, and in criminal cases, are omitted.) It materially shortens the time for taking an appeal.

The Federal Draft provides that the notice of appeal shall be filed within 30 days "of the date of the entry of the judgment order appealed from." The change, which measures the time from service of notice of entry of the judg-

ment, is for the purpose of avoiding uncertainty as to what is a judgment and reducing the possibility of lack of knowledge of the entry of the judgment or order.

The provision for added time for appeal by other parties after notice of appeal is filed by one party is new. The Federal Advisory Committee Note explains this as follows: "It not infrequently happens that a party considers himself aggrieved by the final judgment but is willing to abide by it if it is to be the final result of the action. Such a party should be protected against the possibility that another party may file a final hour appeal and thereby oblige the forbearing party to undergo the expense of an appeal without the opportunity of presenting his own grievance" to the supreme court.

The time limit for taking an appeal would not prevent the taking of an appeal at any time after the entry of the judgment or order and before service of notice of entry.

The final paragraph permits an extension of the time for taking an appeal by the district court "upon a showing of excusable neglect." In view of the ease with which an appeal may be taken—the filing of a simple notice with the clerk of court—and the unlikelihood that there will not be actual notice of the entry of

the judgment or order, it would be an extraordinary case which would justify an extension. But the district court should have the authority to extend time in extraordinary cases where injustice would otherwise result. The phrase "by any party" makes it clear that the district court may extend the time allowed for filing a cross or separate appeal after an initial appeal has been filed.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

Since Rule 77(d), M. R. Civ. P., only requires service of notice of entry of judgment in cases where an appearance has been made, no time appears to be provided for filing notice of appeal from judgments in default cases. This amendment is designed to supply the deficiency.

The addition of the phrase, "or any

political subdivision thereof," is added to make it clear that the 60-day provision applies to cities, counties, etc.

Commencement of Sixty-Day Period

Sixty-day allotted period in which to file an appeal commenced to run the day after motion for new trial was deemed denied under the self-executing provision of Rule 59(d) which provides that a motion for a new trial which does not contain a notice of hearing and upon which no hearing is held is automatically denied ten days after service; district court clerk's letter mailed twenty-two days after service of notice stating that the motion for new trial had been denied had no effect on the commencement of the sixty-day period in which appellants had to file their appeal. *Leitheiser v Montana State Prison*, 161 M 343, 505 P 2d 1203.

Rule 6. Undertaking for costs on appeal.

(a) [Form of undertaking—Time for filing]. Within 10 days after service of notice of appeal an undertaking for costs on appeal shall be filed in the district court, or a deposit of the money in the amount thereof be made with the clerk of the district court to abide the event of the appeal, or the undertaking be waived by the adverse party in writing. The undertaking must be executed on the part of the appellant by at least 2 sureties, or by a corporate surety as may be authorized by law, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on the dismissal thereof, not exceeding five hundred dollars. If the undertaking on appeal is not filed within the time specified, or if the undertaking filed is found insufficient, and if the action is not yet docketed with the supreme court, an undertaking may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file an undertaking may be made only in the supreme court. The undertaking for costs herein provided may be combined in a single document with a supersedeas bond under Rule 7.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

Rules 7 and 8 of the Federal Draft contain provisions for appeal bonds and the stay of judgments and orders. These provisions are not followed in the rule. Rather Rules 6, 7 and 8 hereof are substituted. These provisions are believed to be more in accord with state practice and to better fit into Montana statutes

than do the provisions of the Federal Draft. This rule supersedes R. C. M. 1947, sections 93-8005, 93-8006, 93-8012, 93-8015, and compares with Federal Rule 73(c) and (e).

The amount of the undertaking has remained at \$300 since 1895, and the rule would increase it to \$500. Also, express provision is made for corporate sureties as may be authorized by law. Such authorization is found in R. C. M. 1947, section 93-8711.

Rule 7. Stay of judgment or order pending appeal.

(a) [Stay upon entry of judgment—Undertaking]. Upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under

such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing his property. Upon service of notice of appeal, if the court has made no such order or the appellant desires a stay for a longer period than ordered, he may present to the district court and secure its approval of a supersedeas bond which shall have such surety or sureties as are required for an undertaking for costs on appeal prescribed by Rule 6(a). The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the supreme court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

(b) [Sale of perishable property]. If the judgment or order appealed from directs the sale of perishable property, the district court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the supreme court.

(c) [Cases in which stay of proceedings not allowed]. No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this state; or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, public officer, or board, commanding certain acts to be done which ought to be done by such tribunal, corporation, public officer, or board, and not involving the payment or allowance of money or its equivalent.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule supersedes subdivisions (a) and (d) of Rule 62 of the Montana Rules of Civil Procedure. It also supersedes section 93-8013 in so far as applicable to appeals from district courts to the supreme court. However, since these rules do not apply to appeals from police and justices' courts, section 93-8013 is not superseded in so far as it provides that in cases where an undertaking is required

on appeal by the provisions of sections 93-7901 to 93-7908, "a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and . . . the undertaking or deposit may be waived by the written consent of the respondent." Also section 93-8014 is superseded, and subdivision (c) of this rule is patterned after the last part of that section.

The provision of this rule that, upon entry of a judgment or order a party may apply to the district court on notice or

ex parte for a stay of execution, is designed to afford time to obtain a supersedeas bond during which the status quo is maintained by court order. The power of the supreme court recognized by the last sentence of subdivision (a) supplements the power of the district court.

Approval of Stay Bond

Order of the supreme court giving the district court authority to approve bond for stay of judgment does not give district court any authority to dismiss appeal if bond is not filed. *Bryant Development Assn. v. Dagele*, — M —, 531 P 2d 1319.

Constitutional Power

Supreme court's constitutional power under 1889 Const., art. VIII, § 3, to issue writs necessary to the complete exercise of its appellate jurisdiction overrode the provision in subdivision (c) of this rule prohibiting stay of a writ of mandamus,

and supreme court could stay a district court writ of mandamus ordering the superintendent of banks to issue a bank charter since a stay was necessary to make the right of appeal effectual. *State ex rel. Bennett v. Dowdall*, 157 M 11, 482 P 2d 572.

Supersedeas Bond

Failure of defendant to file supersedeas bond pursuant to this section resulted in dismissal of appeals since such bond is only method to stay execution of judgment and after judgment is paid, it passes beyond review. *Gallatin Trust & Savings Bank v. Henke*, 154 M 170, 461 P 2d 448.

An application for reduction in the amount of a supersedeas bond should be submitted to the district court that set the amount. *State ex rel. Adams v. District Court of Ninth Judicial District in and for County of Teton*, 155 M 309, 471 P 2d 537.

DECISIONS UNDER FORMER LAW

Eminent Domain Proceeding

Where state highway commission filed notice of appeal and perfected its appeal after writ of execution under section 93-9918 had issued, the appeal stayed the

judgment although no bond was filed as required by this section, since under Rule 62(e), no security was required from the state. *Robertson v. State Highway Commission*, 148 M 275, 420 P 2d 21, 24.

Rule 8. Sureties and their justification.

(a) [Liability of surety—Enforcement]. In cases where an undertaking on appeal or supersedeas bond with sureties is required, the provisions of R. C. M. 1947, sections 93-8710 to 93-8715, inclusive, apply. By entering into an undertaking on appeal or supersedeas bond given pursuant to Rules 6 and 7, the surety submits himself to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as his agent upon whom papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of any independent action. The motion and such notice of the motion as the district court prescribed may be served on the clerk of that court, who shall forthwith mail copies to each surety whose address is known.

(b) [Justification of sureties]. A party may except to the sufficiency of the sureties to any bond or undertaking mentioned in this rule at any time within 30 days after the filing of such bond or undertaking; and unless they or other sureties, within 20 days after service of notice of such exception, justify before a judge of the district court, or the clerk thereof, upon 5 days' notice to the other parties of the time and place of justification, execution of the judgment or order appealed from is no longer stayed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

The provisions of subdivision (a) of the rule with respect to proceedings

against sureties is patterned after Rule 8(b) of the Federal Draft. Subdivision (b) of the rule follows the existing Montana practice provided by R. C. M. 1947, section 93-8013, but the language is changed to avoid confusion where there

are cross appeals or mixed forms of relief and to make it clear that either appellant or respondent, or both, may except to the sufficiency of sureties on a bond or undertaking furnished by the other.

Rule 9. The record on appeal.

(a) **COMPOSITION OF THE RECORD ON APPEAL.** The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) **THE TRANSCRIPT OF PROCEEDINGS—DUTY OF APPELLANT TO ORDER—NOTICE TO RESPONDENT IF PARTIAL TRANSCRIPT IS ORDERED—COSTS OF PRODUCING.** Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the trial court, is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer or finding. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

(c) **STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall

be included by the clerk of the district court in the record on appeal. A judge may settle and approve such record after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

(d) **AGREED STATEMENT AS THE RECORD ON APPEAL.** In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 10. Copies of the agreed statement may be filed as the appendix required by Rule 25.

(e) **CORRECTION OR MODIFICATION OF THE RECORD.** If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

(f) **[FINDINGS OF FACT AND CONCLUSIONS OF LAW.]** In all nonjury cases where judgment is rendered on the basis of findings of fact and conclusions of law such findings and conclusions by the district court should be incorporated in the appendix to appellant's brief, along with the district court's opinion, if any.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1971 amendment added subdivision (f).

Advisory Committee's Note

This rule is patterned after Rule 10 of the Federal Draft.

Subdivision (a). This subdivision provides for the use of the original trial record as the official record on appeal, and judgment rolls are nowhere provided for in these Rules. This use of the trial record is now provided for in all federal circuit courts.

Subdivision (b). The Federal Advisory Committee's Note states: "The appellant is required to serve a statement of the issues which he intends to present on appeal if only a part of the proceedings is transcribed solely to allow the appellee to determine whether the partial transcript will be adequate for the determination of the issues presented by the appeal. Such a statement is not the equivalent of an assignment of errors, which is nowhere required in the proposed rules, and the statement would not result in limiting the issues on appeal. The precise statement of the issues presented by the appeal is to be made in the brief. An appellee who can show that he was misled by the statement required by this subdivision and in consequence failed to des-

ignate for transcription material parts of the reported proceedings may seek relief under subdivision (e) of this rule."

The second and third sentences of this subdivision following the title are added to the Federal Draft to make the duty which rests on the appellant more specific. Also, the second paragraph of this subdivision has been expanded to afford protection to an appellant against payment of costs of a transcript of unnecessary portions of the proceeding ordered by a respondent. And the last paragraph, requiring the reporter to certify the correctness of the transcript, has been added to the Federal Draft.

Subdivision (c). The provision of the Federal Draft for settlement has been expanded, patterned after section 93-5508; also, because memories are short, there has been added a time limit for the preparation of the statement.

Subdivisions (d) and (e) are the same as the provisions of the federal draft, adjusted to the Montana court system.

Cost of Transcript

Under rule providing that court "may impose upon the respondent the cost of producing any part of the record which it deems unnecessary for the determination

of the issues," court determined that cost of portion of transcript ordered by respondent, which did not bear on any issue presented upon appeal, should be assessed against respondent. *Ratcliff v. Murphy*, 150 M 31, 430 P 2d 627.

Failure to Perfect Appeal

Appeal was dismissed where appellants had failed to request parts of the transcript within the time allowed by subdivision (b) of this rule, had not requested preparation of any portion of the record on appeal, had failed to pay for copies of documents requested or portions of the transcript prepared, had failed to transmit any part of the record on appeal to the supreme court, had failed to docket the appeal or pay the docket fee, and had failed, within the time allowed by the chief justice, to replace counsel desiring to withdraw with good cause. *Larry C. Iverson, Inc. v. United Bank of Pueblo*, 158 M 223, 490 P 2d 352.

Appeal was dismissed for inadequacy of record where there was no statement of the evidence and sufficiency of evidence was in issue, even though appellant contended that only an issue of law was presented. *Washington v. Washington*, 161 M 516, 507 P 2d 1071.

DECISIONS UNDER FORMER LAW

Evidence Not in Record

Merits of appeal could not be determined where purported transcript on appeal did not contain certificate of judge that records included in the transcript had been used at the hearing. *Anderson v. Mennie*, 144 M 105, 394 P 2d 853, 854.

Late Presentment of Bill

A bill of exceptions presented after the time prescribed in former section 93-5505 was a nullity and could not be considered on appeal. *Anderson v. Mennie*, 144 M 105, 394 P 2d 853, 854.

Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment when the statutory provisions for time and manner of appeal were not complied with. *Payne v. Mountain States Telephone & Telegraph Co.*, 142 M 406, 385 P 2d 100.

Rule 10. Transmission of the record.

(a) **TIME FOR TRANSMISSION—NUMBER OF COPIES OF TRANSCRIPT—DUTY OF APPELLANT.** The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this rule. Six copies of each transcript must be lodged with the clerk of this court for filing. Promptly after filing the notice of appeal the appellant shall comply with the provisions of Rule 9(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of Rule 9(b) and

this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(b) DUTY OF CLERK TO TRANSMIT THE RECORD. When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

(c) EXTENSION OF TIME FOR TRANSMISSION OF THE RECORD—REDUCTION OF TIME. The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(d) RETENTION OF THE RECORD IN THE DISTRICT COURT BY ORDER OF COURT. The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(e) **STIPULATION OF PARTIES THAT PARTS OF THE RECORD BE RETAINED IN THE DISTRICT COURT.** The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) **RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT.** If prior to the time the record is transmitted a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the undertaking on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the supreme court such parts of the original record as the party shall designate.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 11 of the Federal Draft.

Subdivision (a). This subdivision fixes the time for transmission rather than for filing at 40 days after the filing of the notice of appeal, thus enabling the parties to know with certainty precisely when the complete record must be transmitted to the supreme court. The only justification for delay between filing the notice of appeal and the transmission of the record to the supreme court is the time required for securing a transcription of the trial proceedings. If the appellant is prevented from securing the necessary transcript within the 40-day period by circumstances beyond his control, he may seek an extension of time for transmitting the record.

The requirement that the appellant take any other action necessary to enable the clerk to assemble and transmit the record emphasizes the primary responsibility of the appellant for effecting timely transmission of the record. His responsibilities include, for example, the payment of any required fee or charge.

Subdivision (b). The appellant is allowed 40 days between the filing of the notice of appeal and the transmission of the record in order to allow him to secure the necessary transcript. If the transcript is available sooner, the allowance is unnecessary, and either party may oblige the clerk of the district court to transmit the record forthwith. On the other hand, unless the record contains the necessary transcript, the clerk is not to transmit it.

Subdivision (c). Cause for extension

of the time by either the district or the supreme court must be shown. The final sentence permits any party to expedite the appeal in cases in which the record is complete by obtaining an order that the record be transmitted and the appeal docketed at a date earlier than otherwise allowed or fixed.

Subdivision (d). This subdivision permits the record to be retained in the district court by order of the supreme court, or order of the district court subject to the order of the supreme court. Especially in cases where the judgment or order does not dispose of the entire litigation, retention of the record in the district court may be a convenience for counsel and the district court. In some cases there may be no need for the transmission of the record, and the labor and expense of transmission may be saved.

Subdivision (e). This subdivision permits parties to stipulate against transmission of designated parts of the record free from the fear that a mistake may substantially affect the scope of the appeal. The final sentence makes it clear that a stipulation that designated parts of the record not be transmitted in no way diminishes the record itself. In effect, a party may at any time revoke his stipulation against transmission of parts of the record.

Subdivision (f). The substance of this subdivision was taken from Fed. R. Civ. P., Rule 75(j).

Dismissal of Appeal

Appeal was dismissed where appellants had not transmitted any part of the record on appeal within the time required by subdivision (a) of this rule, had not applied for an extension of time, had not

requested parts of the transcript from the district court clerk within the time allowed, had not requested preparation of any part of the record on appeal, had not paid for copies of documents requested or portions of the transcript prepared, had not docketed the appeal or paid the docket fee, and had failed, within the time allowed by the chief justice, to replace counsel desiring to withdraw with good cause. *Larry C. Iverson, Inc. v. United Bank of Pueblo*, 158 M 223, 490 P 2d 352.

Enforcement of Rule

Supreme Court refused to dismiss appeal for failure to file record within time limit where appellant-defendant had been granted the appellant over 130 days in the record, but through error of defendant or district court, the order granted a ninety-day extension for filing which to file record and where appellant at the end of that period moved for a thirty-day extension which was granted and on the day of that motion filed the record. *Hannifin v. Retail Clerks International Assn.*, — M —, 511 P 2d 982.

Rule 11. Docketing the appeal—Filing of the record.

(a) **DOCKETING THE APPEAL.** Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the supreme court the fee for filing the record on appeal fixed by section 82-503 of the 1947 Revised Codes of Montana, and the clerk shall thereupon enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant

(b) **FILING OF THE RECORD.** Upon receipt of the record by the clerk of the supreme court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) **DISMISSAL FOR FAILURE OF APPELLANT TO CAUSE TIMELY TRANSMISSION OR TO DOCKET APPEAL.** If the appellant shall fail to cause timely transmission of the record or to pay the filing fee if a filing fee is required, any respondent may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless he is otherwise exempt therefrom. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 12 of the Federal Draft, with adjustments to

state practice. The provision of section 82-503 for a fee for filing the "transcript" on appeal will apply to the "record" on appeal pursuant to these rules.

The appellant's responsibility with respect to docketing and filing are specified.

The appellant may pay the filing fee at any time after filing the notice of appeal, and it is then the duty of the clerk of the supreme court to enter the appeal on the docket. The appellant's responsibility is (1) to pay the filing fee at or before the time allowed or fixed for transmission of the record, and (2) to insure that the record is transmitted to the supreme court within the time allowed or fixed for its transmission. The clerk of the supreme court is directed to assign to cases on appeal the title which was used in the district court in the interest of facilitating future reference and citation and location of cases in indexes.

Dismissal of Appeal

Appeal was dismissed where appellants had failed to docket the appeal or pay the docket fee, had not requested parts of the transcript within the time allowed, had not requested preparation of any part of the record on appeal, had not paid for copies of documents requested or portions of the transcript prepared, had not transmitted any part of the record on appeal to the supreme court, and had not, within the time allowed by the chief justice, replaced counsel desiring to withdraw for good cause. *Larry C. Iverson, Inc. v. United Bank of Pueblo*, 158 M 223, 490 P 2d 352.

DECISIONS UNDER FORMER LAW

Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment

when the statutory provisions for time and manner of appeal were not complied with. *Payne v. Mountain States Telephone & Telegraph Co.*, 142 M 406, 385 P 2d 100.

Rule 12. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8020.

Second Appeal Denied

Appellant, who requested dismissal of his appeal from ruling denying motion to set aside summary judgment, cannot later make a second appeal attacking the validity of the summary judgment. *United Bank of Pueblo v. Iverson*, — M —, 525 P 2d 21.

Rule 13. Acts of executors, administrators or guardians valid when appointment vacated.

When the judgment or order appointing an executor, or administrator, or guardian is reversed on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such judgment or order had been affirmed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8016.

Rule 14. Ruling against respondent may be reviewed.

Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting his substantial rights on the appeal of said cause, together with any required objection or exception of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings, and the objections and exceptions thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. And no cause shall be reversed upon appeal

by reason of any error committed by the trial court against the appellant, where the record shows that the same result would have been attained had such trial court not committed an error or errors against the respondent.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947,

section 93-8023, but eliminates references to bills of exceptions and statements of the case properly settled because these rules nowhere provide for such bills and statements.

Rule 15. Remedial powers of the supreme court.

When the judgment or order is reversed or modified, the supreme court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947,

section 93-8024, substituting "supreme court" for "appellate court" and eliminating the provision for damages when the appeal is made for delay. Rule 32 covers the matter of damages.

Rule 16. Remittitur must be certified to the clerk of the district court.

When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk of the district court from which the appeal is taken. The clerk of the district court must enter at length in the records of the court the certificate received. Also, in cases of appeal from a judgment, the clerk must enter a minute of the judgment of the supreme court on the docket against the original entry; and in cases of appeal from an order, he must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the supreme court on appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates the substance of

R. C. M. 1947, section 93-8025, but eliminates references to the judgment roll, which is nowhere provided for in these rules.

III. ORIGINAL PROCEEDINGS—EXTRAORDINARY WRITS

Rule 17. Acceptance and manner of conducting.

Rule 17. Acceptance and manner of conducting.

(a) **WHEN ACCEPTED.** The supreme court is an appellate court but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the supreme court is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen

under conditions making due consideration in the trial courts and due appeal to this court an inadequate remedy, or when supervision of a trial court other than by appeal is deemed necessary or proper.

(b) HOW COMMENCED AND CONDUCTED. Proceedings commenced in the supreme court originally to obtain writs of habeas corpus, injunction, review, mandate, quo warranto, supervisory control, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the Code of Civil Procedure for the conduct of such or analogous proceedings and by these additional rules. All papers filed shall conform to the requirements of Rule 27, except typewritten applications, briefs, copies of exhibits and the like may be used without securing permission of the chief justice as required by Rule 27(a). The provisions of Rule 27(b) shall be observed.

(c) APPLICATIONS—WHEN FILED. The moving party's application shall be filed with the clerk of the supreme court one hour prior to its presentation to the court.

(d) APPLICATIONS—WHAT TO CONTAIN. The application for the issuance of any of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated or expected to be raised in the proceeding, and also the fact which renders it necessary and proper that the writ should issue originally from the supreme court; the said matters will be taken into consideration by the court in determining the necessity and propriety of accepting jurisdiction and granting the alternative writ or order to show cause. Each application shall also set forth as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document, proceeding or court minute referred to in the application, or necessary to make out a prima facie case or to substantiate the pleading or conclusion or legal effect. A memorandum of authorities must be filed with the application. On original applications counsel shall file with the clerk of this court the original court file, with the original application, unless for some reason the same is not available.

(e) APPLICATIONS—HOW AND WHEN PRESENTED. The supreme court will receive and hear original applications in open court on any day when the court is in session; but at least an hour's prior notice of such presentation shall be given by counsel to the chief justice or acting chief justice. Not over fifteen minutes shall be allowed for the presentation of any such application unless on prior request further time is granted.

(f) ISSUANCE OF ALTERNATIVE WRIT OR ORDER TO SHOW CAUSE. This court will, as promptly as possible after the presentation of an application, either dismiss the same, issue an alternative writ, order to show cause, or such other remedial writ or order as it deems expedient.

(g) BRIEFS. At or before the time set for final hearing, each party shall serve and file his brief in full conformance with Rules 20, 23 and 27, and containing a statement of the facts and of the points of law applicable, with the authorities relied upon.

(h) HEARING—WHEN HAD. Unless otherwise ordered the hearing shall be had at the time fixed for the return. At or prior to said return time the opposing party shall serve and file, without waiver, any and all pleadings and motions desired to be presented, including answer or return, and all issues shall be argued at the hearing, the applicant opening and closing, and the parties being allowed the same time as upon argument of appeals. If testimony becomes necessary a reference will be ordered.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1971 amendment added to the second sentence of subdivision (b) the clause excepting typewritten papers; added the third sentence to subdivision (b); and added the final sentence to subdivision (d).

Supreme Court Memorandum

In October, 1969, the Supreme Court issued a Memorandum to Counsel, reading as follows:

"In order to facilitate presentation and our consideration of applications prepared in accordance with Rule 17(d), M. R. App. Civ. P. for an original or remedial writ, in addition to the requirements of the rule, counsel should, if at all possible, bring to this Court the original district court file, together with transcript of any hearing, if the same has been reduced to writing, that has been had involving the matter sought to be inquired into.

"Compliance with this request will be appreciated."

See final sentence of subdivision (d) added by 1971 amendment.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rule IV, with changes in subdivisions (e) and (f) designed to recognize that on original applications the court is not limited to the issuance of alternative writs or orders to show cause, but may issue whatever remedial writ or order it deems expedient.

Alternative Writs

State highway commission, ordered by district court to produce certain appraisals under discovery rules, was entitled to have order reviewed on allegations that order required production of irrelevant and privileged matter in excess of lower court's jurisdiction, that it was not an appealable order and that commission had no remedy at law, which allegations were sufficient to authorize issuance of alternative writ.

State Highway Commission v. District Court, First Judicial District, 149 M 384, 427 P 2d 49.

Declaratory Judgment

Minimum Wage Act was of such importance to all citizens of state and of such nature as to justify original proceeding in supreme court for declaratory judgment as to constitutionality and as to application to firemen and policemen. City of Billings v. Smith, 158 M 197, 490 P 2d 221.

Injunction

Supreme court declined jurisdiction in original proceeding seeking injunction restraining defendant school districts from collecting certain fees and levies and requiring students to purchase certain material because no emergency existed, class action could be established in district court and thorough examination into multiple problems presented could not have been achieved. State ex rel. Thompson v. Elementary School Dist. No. 16, Hill County, 156 M 79, 474 P 2d 700.

Needless Litigation Prevented

Writ of supervisory control was proper where district court orders requiring state highway commission to quiet title against all possible lien holders of land subject to condemnation and to use valuation date more than three years beyond the alleged proper date were not appealable until after final judgment and this would result in extended and needless litigation if district court was wrong. State Highway Commission v. District Court, 160 M 35, 499 P 2d 1228.

Writ of Supervisory Control

Writ of supervisory control to compel dismissal of removal petition that could not be granted even if the facts alleged were proved was a necessary and proper supervision of district court. State ex rel. Arnot v. District Court of First Judicial District In and For County of Lewis and Clark, 155 M 344, 472 P 2d 302.

Although there is no statutory means provided for appealing from the denial of a request to convene a grand jury, a writ of supervisory control may issue so that

the decision by the lower court may be reviewed by the Montana supreme court. State ex rel. Woodahl v. District Court, — M —, 530 P 2d 780.

References

State ex rel. Buttrey Foods, Inc. v. District Court, 148 M 350, 420 P 2d 845, 847.

IV. APPEALS IN FORMA PAUPERIS

Rule 18. Applications and manner of proceeding.

Rule 18. Applications and manner of proceeding.

(a) APPLICATION TO DISTRICT COURT. A party who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, his inability to pay the fees and costs of the appeal or to give security therefor, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the supreme court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the district court shall state the reasons for the denial.

(b) APPLICATION TO THE SUPREME COURT. If the motion for leave to proceed on appeal in forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in the supreme court within 30 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the district court and of the statement of reasons for denial given by the district court.

(c) FORM OF BRIEFS, APPENDICES AND OTHER PAPERS. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 23 of the Federal Draft, but omits the last clause of the Federal Draft reading "and

may request that the appeal be heard on the original record without an 'appendix.'" This change is made because these rules do not adopt the appendix system of Rule 30 of the Federal Draft. See Rule 25. This rule is believed to be consistent with R. C. M. 1947, section 93-8625.

V. GENERAL PROVISIONS

- Rule 19. Record of commissions and oaths.
 20. Filing and service.
 21. Computation and extension of time.
 22. Motions.
 23. Briefs.
 24. Brief of an amicus curiae.
 25. The appendix to the briefs.
 26. Filing and service of briefs.
 27. Form of briefs, the appendix, motions and other papers.
 28. Prehearing conference.
 29. Oral argument.
 30. Entry and notice of orders and judgments.
 31. Interest on judgments.
 32. Damages for appeal without merit.
 33. Costs.
 34. Petitions for rehearing.

35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.
36. Voluntary dismissal.
37. Substitution of parties.
38. Cases involving constitutional questions where the state is not a party.
39. Calendar—Withdrawal of records.
40. Appeals from injunction orders.
41. Statutes and rules amended.
42. Applicability in general.
43. Title—Effective date—Statutes superseded.

Rule 19. Record of commissions and oaths.

(a) **COMMISSIONS AND OATHS.** The commissions and oaths of the justices and the clerk of this court, and the attorney general shall be recorded in the records of this court.

(b) **MINUTES OF COURT.** The minutes of this court shall be approved by the chief justice (or in his absence by the associate justice having the shortest term to serve), and attested by the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rule I.

Rule 20. Filing and service.

(a) **FILING.** Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(b) **SERVICE OF ALL PAPERS REQUIRED.** Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) **MANNER OF SERVICE.** Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) **PROOF OF SERVICE.** Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 25 of the Federal Draft, but the phrase "in-

Rule 21(a) RULES OF APPELLATE CIVIL PROCEDURE

cluding any transcript" has been added to subdivision (b) to make it clear that copies of any transcript are to be served on all parties. The first paragraph of Montana Supreme Court Rule III is superseded.

Rule 21. Computation and extension of time.

(a) COMPUTATION OF TIME. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) EXTENSION OF TIME. The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; but the court may not extend the time for filing a notice of appeal, except as provided in Rule 5.

(c) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 26 of the Federal Draft. There are omitted provisions of the Federal Draft with respect to petitions for allowance, applica-

tions for permission to appeal, appeals from advisory agencies, and a definition of "legal holiday." A definition of "legal holiday" is contained in R. C. M. 1947, section 19-107.

It is believed that these provisions are consistent with R. C. M. 1947, section 90-407.

Rule 22. Motions.

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Motions for procedural orders may be determined ex parte. The supreme court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule supersedes Montana Supreme

Court Rule XI. It is patterned after Rule 27 of the Federal Draft, but the last sentence of the Federal Draft requiring the filing of three copies of motions and

supporting papers has been omitted. Also, the amendment of the Montana Supreme Court Rule XI, effective January 1, 1965. there has been added as a last paragraph

Rule 23. Briefs.

(a) **BRIEF OF THE APPELLANT.** The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below, e.g.: "The plaintiff brought this action in the district court to recover damages for the wrongful death of her husband. The jury returned a verdict for the plaintiff. On motion of the defendant the trial judge entered judgment for the defendant n. o. v. on the ground that there was no evidence to support a finding of negligence on the part of the defendant. From this judgment the plaintiff appeals."

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) **BRIEF OF THE RESPONDENT.** The brief of the respondent shall conform to the requirements of subdivision (a) (1) to (4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) **REPLY BRIEF.** The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) **REFERENCES IN BRIEFS TO PARTIES.** Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) **REFERENCES IN BRIEFS TO THE RECORD.** Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e. g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) **REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC.** If determination of the issues presented requires the study of

statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the supreme court. When the error alleged is to the charge of the court, the brief of the parties shall set out with appropriate transcript references the part referred to *totidem verbis*, whether it be directed to instructions given or instructions refused.

(g) **LENGTH OF BRIEFS AND COSTS.** Except by permission of the court briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. For purposes of assessing costs under R. C. M. 1947, section 93-8606, reasonable costs shall be limited as follows: For appellant's brief fifty (50) pages; for respondent's brief forty (40) pages; for reply brief fifteen (15) pages. In addition, reasonable costs for briefs shall be limited to \$250 for appellant's brief and \$200 for respondent's brief.

(h) **BRIEFS IN CASES INVOLVING CROSS APPEALS.** If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 25 and 26, unless the parties otherwise agree or the court otherwise orders. The brief of the respondent shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1971 amendment added the third sentence to subdivision (f).

Advisory Committee's Note

This rule is patterned after Rule 28 of the Federal Draft, adjusted to state

practice. The second paragraph of subdivision (e) of the Federal Draft is omitted, since these rules do not adopt the "appendix" system of Rule 30 of the Federal Draft. See Rule 25.

Also, in the Federal Draft, subdivision (f) requires reproduction of statutes, rules, regulations, etc. This has been changed, so that reproduction is permissive, unless ordered by the supreme court.

Rule 24. Brief of an amicus curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 29 of the

Federal Draft. It follows the practice of a majority of federal circuits in requiring leave of court to file an amicus brief unless the litigants consent to its filing.

Rule 25. The appendix to the briefs.

(a) **USE OF AN APPENDIX.** At any time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file and serve with his brief an appendix.

(b) **CONTENTS OF THE APPENDIX.** Unless otherwise ordered by the supreme court, an appendix shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant pleading and relevant portions of the charge, finding and opinion; (3) the judgment, order or decision in question; and (4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) **ARRANGEMENT OF THE APPENDIX.** At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in chronological order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where that page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) **REPRODUCTION OF EXHIBITS.** Exhibits may be contained in a separate volume, suitably indexed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

Rules 30 and 31 of the Federal Draft, require post-brief appendices, unless dispensed with by court rule or order. The

rule does not follow the Federal Draft at this point. Rather, under this rule the supreme court may order an appendix, or either party may if he chooses use an appendix. When an appendix is used it is to be filed and served with the brief.

Rule 26. Filing and service of briefs.

(a) **TIME FOR FILING BRIEFS.** The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(b) **NUMBER OF COPIES TO BE FILED AND SERVED.** Ten copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by Rule 20.

(c) **CONSEQUENCES OF FAILURE TO FILE BRIEFS.** If an appellant fails to file his brief within the time provided by this rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 31 of the Federal Draft.

Subdivision (a) follows the time fixed for filing of briefs provided in the Federal Draft, and that is the time now allowed by a majority of the federal circuits.

Subdivision (b) of the Federal Draft is omitted, since it provides a post-brief time for filing the appendix. Under Rule 25 an appendix must be filed and served with the brief, unless otherwise ordered by the supreme court.

Subdivision (b) of this rule is patterned after subdivision (c) of the Federal Draft. The number of copies to be filed and served, however, are adjusted to fit state practice and the present requirement of Montana Supreme Court Rule II.

Subdivision (c) of this rule follows subdivision (d) of Rule 31 of the Federal Draft.

Failure of Respondent

Where the respondent does not appear by brief, appellate court shall take appellant's versions and positions as being correct if they are in fact supported by the record. *Alden v. Board of Zoning Commissioners*, — M —, 528 P 2d 1320.

Rule 27. Form of briefs, the appendix, motions and other papers.

(a) **FORM OF BRIEFS, APPENDICES AND SEPARATE VOLUMES OF EXHIBITS.** Briefs, appendices and separate volumes of exhibits may be produced by standard typographic printing or by any duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices and separate volumes of exhibits may not be submitted without permission of the chief justice of the supreme court, except in behalf of parties allowed to proceed in forma pauperis. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter. Briefs, appendices and separate volumes of exhibits shall be on white uncalendered book paper in book or booklet form. If produced by the standard typographic printing process, the pages shall be ten inches long and seven inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. If produced by a duplicating or copying process, the pages shall be eleven inches long and eight and one-half inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. The pages shall be fastened at the side and numbered at the top.

(b) **TYPEWRITTEN PAPERS AND MOTIONS.** Papers not required to be produced in a manner prescribed by subdivision (a) of this rule shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade, in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper, eight and one-half inches wide and thirteen inches long, numbered at the bottom, with a ruled margin of one and one-half inches on the left-hand side of the page and one inch on the right-hand side, and numbered lines, not more than thirty-two lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than two hundred fifty pages; provided, however, that if the pages number fifty or less they may be bound at the top.

In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible and nonuniform typewritten copies has become so great that this rule will be strictly applied and papers not complying with it will not be received.

(c) **FIRST PAGE AND COVER.** All papers shall be bound in cardboard or pasteboard covers, unless bound at the top under subdivision (b) of this rule, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of this court, the title of the case as in the court below, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require, the names of counsel for appellant and respondent, the title of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

Rule 32 of the Federal Draft is adjusted to conform to the paper and forms

prescribed for state practice and Montana Supreme Court Rule II, as amended effective January 1, 1965. The provisions requiring the use of pica type and two typewritten originals are stricken as being obsolete or unnecessary.

Rule 28. Prehearing conference.

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 33 of the Federal Draft.

Rule 29. Oral argument.

(a) **NOTICE OF HEARING—POSTPONEMENT.** The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) **TIME ALLOWED FOR ARGUMENT.** Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) **ORDER AND CONTENT OF ARGUMENT.** The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argu-

ment shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) CROSS AND SEPARATE APPEALS. A cross or separate appeal shall be argued with the initial appeal at a single hearing, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) NONAPPEARANCE OF COUNSEL—FAILURE TO FILE BRIEFS. If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) SUBMISSION ON BRIEFS. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) USE OF PHYSICAL EXHIBITS AT HEARING—REMOVAL. If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 34 of the Federal Draft, but the time provisions are more liberal than those of the Federal Draft which allows 30 minutes to each side. It is intended that the time be afforded to opposing interests rather than to individual parties, as is true under the

Federal Draft. Thus, if there are multiple appellants they have together but 40 minutes, and multiple respondents have a total of 30 minutes. The 40 minutes for the appellant or applicant may be divided between the opening and closing statement, as the appellant or applicant chooses.

In other particulars this rule follows the usual practice among the federal circuits.

Rule 30. Entry and notice of orders and judgments.

(a) ENTRY AND NOTICE. The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order, and notice of the date of entry thereof.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 36 of the Federal Draft. The purpose is to clarify what constitutes an entry of a

judgment or order. The provision for mailing by the clerk is for the convenience of the parties but does not affect the time for taking an appeal, which is controlled by Rule 5. As to the entry of judgments, see M. R. Civ. P., Rule 58.

Rule 31. Interest on judgments.

If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was

rendered or made in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

The language of Rule 37 of the Federal Draft is modified to conform to R. C. M. 1947, section 93-8622.

Reversal without Directions

Where supreme court by its reversal of judgment granted plaintiff's demand for payment of dishonored checks, further evidence as to damages would not be proper; and although court omitted specific directions, there was no need for a new trial. *Sun River Cattle Co. v. Miners' Bank of Montana*, — M —, 525 P 2d 19.

Rule 32. Damages for appeal without merit.

If the supreme court is satisfied from the record and the presentation of the appeal, that the same was taken without substantial or reasonable grounds, but apparently for purposes of delay only, such damages may be assessed on determination thereof as under the circumstances are deemed proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

The language of Montana Supreme Court Rule XIX is substituted for that of Rule 38 of the Federal Draft.

Damages Not Allowed

Appellee was not entitled to recover additional damages under this rule where appellant had a reasonable ground for

appeal. *Larry Larson & Associates v. John R. Daily, Inc.*, 158 M 231, 490 P 2d 355.

Frivolous Appeals

Strangers to action who filed various documents which were stricken as frivolous, then appealed from such striking, were assessed \$1000 damages under this rule. *Farmers State Bank of Conrad v. Iverson*, — M —, 509 P 2d 839.

Rule 33. Costs.

(a) **COSTS ON APPEAL.** Costs on appeal will be taxed as provided by R. C. M. 1947, section 93-8606, and if not otherwise provided by the Court in its decision, will automatically be awarded to the successful party against the other party. All costs on appeal shall be claimed as provided by section 93-8621, R. C. M. 1947.

(b) **COSTS OF BRIEFS AND APPENDICES.** The cost of printing or otherwise producing briefs and appendices shall be taxable at rates not higher than specified in Rule 23(g).

(c) **OTHER COSTS TAXABLE.** Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

(d) **COSTS IN ORIGINAL PROCEEDINGS.** Costs in original proceedings, including reviews other than by appeal, will be taxed as provided by R. C. M. 1947, sections 93-8602, 93-8603, 93-8604 and 93-8611, and if not otherwise provided by the court in its decision, will be awarded to the successful party against the other party; provided, however, that

costs awarded to plaintiff or relator in special proceedings to review inferior court rulings, orders or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the inferior court's action, rather than against the state, county, municipality, subdivision, judge or justice.

(e) **UNNECESSARY COSTS.** Whenever it appears that the successful party has caused any redundant, useless or unnecessary matter to be incorporated in the record, briefs, or appendices, whether on appeal or in a special proceeding, he shall not recover as part of his costs so much of the expense as is occasioned thereby.

(f) **NOTATION BY CLERK.** The clerk of the supreme court shall, in all cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a peremptory writ in an original proceeding, and in the remittitur, peremptory writ or judgment, a clause awarding the costs in accordance with this rule or the special order of this Court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the clerk shall also furnish therewith an itemized statement of such costs as have been paid by him.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 1750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

Amendments

The amendment of September 10, 1968, in subdivision (a), added the last sentence; in subdivision (b), deleted "in the supreme court" after "taxable" and deleted a second sentence reading "A party who desires such costs to be taxed shall state them in a verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after entry of judgment"; in subdivision (c), substituted the present caption for "costs taxable in the District Court[s]"; in subdivision (f), inserted "the" before "costs in accordance", deleted "in the supreme court" before "in

accordance" and substituted "by" for "to" before "him."

Advisory Committee's Note

This rule is a combination of Rule 39 of the Federal Draft and Montana Supreme Court Rule XVIII. With some adjustment of language, subdivision (a) is taken from the Montana Rule; subdivisions (b) and (c) from the Federal Draft; and subdivisions (d), (e) and (f) from the Montana Rule.

Advisory Committee's Note to September 10, 1968 Amendment

The amendments to Rule 33(a), (b), (c) and (f) are to make it clear that all costs on appeal are claimed in the court below after remittitur and eliminate the former duplication of cost bills in both the supreme court and district court.

Rule 34. Petitions for rehearing.

When, in appeals or special proceedings, it is ordered that remittitur, peremptory writ or judgment issue forthwith, no petition for rehearing will be entertained. In all other cases a petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none other: That some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed. Oral argument in

support of the petition will not be permitted. Six copies of the petition and six copies of objections thereto, which may be in typewritten form, shall be filed with the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 substituted "fact" for "facts" following the colon; deleted a former, next to last sentence reading "No reply to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will not ordinarily be granted in the absence of such a request"; and substituted "and six copies of objections * * * form" for "produced in accordance with Rule 27(a)."

Advisory Committee's Note

This rule is patterned in part after Rule 40 of the Federal Draft. However, the first sentence is added from Montana Supreme Court Rule XV, as is the statement of the grounds for the petition and the procedure for serving and filing objections; also the 14 days for filing pro-

vided in the Federal Draft has been shortened to conform to state practice, and the number of copies required has been reduced from 25 to 6. The second sentence provides for filing of the petition within 10 days after "the decision of the supreme court has been rendered," rather than after "entry of judgment" as provided by the Federal Draft. The purpose is to avoid uncertainty as to when a judgment has been entered, which might exist under the language of the Federal Draft where the mandate of the supreme court is returned to the district court and there entered.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

This amendment would dispense with requests by the court as a condition to filing replies to petitions for rehearing, and would permit petitions and objections thereto to be typewritten in the form prescribed by Rule 27(b).

Rule 35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.

(a) NOTICE AND COPY OF DECISION TO BE FURNISHED. Upon the decision of a cause, notice thereof, together with a copy of the court's written decision, will immediately be mailed to counsel for each party.

(b) REMITTITUR — WHEN ISSUED — WHEN COPY OF OPINION TO ACCOMPANY. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

(c) MANDATE FROM UNITED STATES SUPREME COURT—PROCEDURE THEREON. Upon receipt by the clerk of the supreme court of Montana of a mandate from the supreme court of the United States in any case at law or in equity theretofore taken from the supreme court of Montana to the supreme court of the United States, it shall be the duty of said clerk forthwith to issue under his hand and the seal of the supreme court of Montana a remittitur to the district court by which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate,

and all the costs subsequent to the appeal from said district court shall be taxed in such remittitur.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rules XIV, XXI, and XXII.

Rule 36. Voluntary dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 42 of the Federal Draft.

Rule 37. Substitution of parties.

(a) **DEATH OF A PARTY.** If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the supreme court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the supreme court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 20. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the supreme court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision.

(b) **SUBSTITUTION FOR OTHER CAUSES.** If substitution of a party in the supreme court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) **PUBLIC OFFICERS—DEATH OR SEPARATION FROM OFFICE.**

(1) When a public officer is a party to an appeal or other proceeding in the supreme court in his official capacity and during its pendency

dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding he may be described as a party by his official title rather than by name; but the court may require his name to be added.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 43 of the Federal Draft.

Rule 38. Cases involving constitutional questions where the state is not a party.

It shall be the duty of counsel who challenges the constitutionality of any act of the Montana legislature in any suit or proceeding in the supreme court to which the state of Montana, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record to give immediate notice in writing to the court of the existence of said question, specifying the section of the Code or the chapter of the session law to be construed. The clerk shall thereupon certify such fact to the attorney general of the state of Montana.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

the court. *Gilbert v. Gilbert*, — M —, 533 P 2d 1079.

Advisory Committee's Note

This rule is patterned after Rule 44 of the Federal Draft.

Constitutional Question

Constitutional questions presented for review on appeal which were not raised in the trial court and were not certified to the supreme court with notice to the attorney general will not be considered by

Notice to Attorney General

If the procedures of Rule 38 have not been followed and there has been no notice to the attorney general that a legislative act is being challenged on constitutional grounds, the issue is not properly before the court. *Clontz v. Clontz*, — M —, 531 P 2d 1003; *Grant v. Grant*, — M —, 531 P 2d 1007.

Rule 39. Calendar—Withdrawal of records.

(a) **PLACING CAUSES UPON CALENDAR.** Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(b) **SETTING CAUSES FOR ARGUMENT.** As often as found convenient, causes on the calendar will be set for argument by the court in the chronological order in which they have been placed on the calendar, except such causes as are determined entitled to precedence or as otherwise ordered by the court. Oral arguments will not be heard during the months of July and August.

(c) **ADVANCEMENT OF CAUSES.** Appeals from orders dissolving, refusing to dissolve, granting or refusing to grant writs of injunction, appeals from orders dissolving or refusing to dissolve attachments, appeals from orders appointing or refusing to appoint receivers, appeals from orders or judgments holding appellant in custody, and workmen's compensation appeals, are entitled to precedence and will, upon motion of either party, be advanced on the calendar.

Rule 39(d) RULES OF APPELLATE CIVIL PROCEDURE

(d) PERMISSION TO TAKE RECORD FROM CLERK'S OFFICE. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office; provided, that the court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

Montana Supreme Court Rules XIII and XVI have been substituted for the provisions of Rule 45 of the Federal Draft.

Rule 40. Appeals from injunction orders.

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the district court, or to obtain such injunction order pending the appeal, he shall apply to the district court under Rule 62 of the Montana Rules of Civil Procedure. In the event the relief there requested be not granted he may file in the supreme court his sworn application, setting forth the proceedings appealed from and the relief desired, and present with it to the supreme court, a verified copy of the affidavits or evidence used on the hearing in the district court. Such application will be heard ex parte and without argument, and the court, upon such record will make such order in the premises as may be proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates the substance of Supreme Court Rule XXIII, as amended effective April 3, 1963.

Rule 41. Statutes and rules amended.

[This rule amended Rule 72 of the Montana Rules of Civil Procedure, and R. C. M. 1947, sections 93-5708, 93-8001, 93-8002, 93-8013 and 93-9905, subdivision 3. For text of amendments see the designated sections.]

Rule 42. Applicability in general.

(a) SPECIAL STATUTORY PROCEEDINGS. The statutory proceedings listed in Table A of the Montana Rules of Civil Procedure and any other special statutory proceedings, whether or not listed in said Table A, are excepted from these rules in so far as they are inconsistent or in conflict with the procedure and practice provided by these rules.

(b) APPEALS TO DISTRICT COURTS. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, which shall govern procedure and practice relating thereto in so far as they are not inconsistent with these rules.

(c) RULES INCORPORATED INTO STATUTES. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, pro-

vides that any act in a civil proceeding in a district court or in the Montana supreme court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, in so far as practicable.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This Rule is patterned after Rule 81 of the Montana Rules of Civil Procedure. It excepts inconsistent special statutory proceedings and appeals to and reviews by the district courts to the extent that

they are governed by inconsistent statutes and it is impracticable to incorporate procedures provided by these rules. But statutes such as sections 93-9302, 93-9303, 93-9718, 93-9719, and 93-9922, which contain catch-all references to the applicability of statutes which have been superseded, are brought into line with these rules in so far as practicable.

Rule 43. Title—Effective date—Statutes superseded.

(a) **TITLE.** These Rules shall be known as the Montana Rules of Appellate Civil Procedure and may be cited as M. R. App. Civ. P.

(b) **EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.** These rules will take effect on January 1, 1966. They govern all appeals and original proceedings brought after they take effect, and also all further proceedings in appeals and original proceedings then pending, except to the extent that in the opinion of the supreme court their application in a particular appeal or original proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the appeal or original proceeding was brought applies.

(c) **STATUTES AND RULES SUPERSEDED.** Upon the taking effect of these rules all statutes and rules, and parts thereof, in conflict herewith, and the statutes and rules listed in Tables A, B, and C, in so far as they relate to civil proceedings, are superseded in respect of practice and procedure on appeals from the district courts to the supreme court and in original proceedings brought in the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates provisions similar to those contained in Rules 85 and 86

of the Montana Rules of Civil Procedure. Subdivision (c) refers to statutes and rules only in so far as they relate to civil proceedings, to make it clear that criminal proceedings are in no way affected by these rules.

Appendix of Forms.

Form 1.

NOTICE OF APPEAL TO THE SUPREME COURT OF
THE STATE OF MONTANA FROM A JUDGMENT
OR ORDER OF A DISTRICT COURT
IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF

A. B.		Plaintiff	} Notice of Appeal
	vs.		
C. D.		Defendant	

Notice is hereby given that C. D., defendant above-named, hereby appeals to the supreme court of the state of Montana (from the final judgment) (from the order (describing it)) entered in this action on the _____ day of _____, 19_____.

(S) _____

 Attorney for C. D.
 (Address)

Form 2.

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO
 APPEAL IN FORMA PAUPERIS
 IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
 OF THE STATE OF MONTANA,
 IN AND FOR THE COUNTY OF _____

A. B.	Plaintiff	} AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED ON APPEAL WITHOUT PRE- PAYMENT OF COSTS
vs.		
C. D.	Defendant	

I, _____, being first duly sworn, depose and say that I am the _____ in the above-entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?
 - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
 - b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?
 - a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account?
 - a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Subscribed and Sworn to before
me this day of,
19

Notary Public

Let the applicant proceed without
prepayment of costs.

District Judge

Table A. List of Statutes and Rules Superseded or Amended.

Statutes Superseded (R. C. M. 1947, sections)	R.S.C.M.* Superseded, except as applicable to criminal procedure	M.R.Civ. P.** Rule Superseded
93-5501		62(a)
93-5503		62(d)
93-5504	Rule	Amended
93-5505	I	72
93-5506	II	
93-5507	III (1st par.)	
93-5508	IV	
93-5509	VI	
93-5607	VII	
93-5608	VIII	
93-5702	IX	
93-5707	X	
93-8003	XI	
93-8004	XII	
93-8005	XIII	
93-8006	XIV	
93-8011	XV	
93-8012	XVI	
93-8014	XVII	
93-8015	XVIII	
93-8016	XIX	
93-8017	XXI	
93-8018	XXII	
93-8019	XXIII	
93-8020	XXIV	
93-8021		
93-8022		

Table B

RULES OF APPELLATE CIVIL PROCEDURE

93-8023
 93-8024
 93-8025
 Amended
 93-5708
 93-8001
 93-8002
 93-8013
 93-9905(3)

* Rules of the Supreme Court of Montana.

** Montana Rules of Civil Procedure.

Table B. List of Rules of Appellate Civil Procedure Superseding, in Whole or in Part, or Amending, Statutes and Rules.

	Statutes and Rules** Superseded or Amended (R. C. M. 1947, sections)
M. R. App. Civ. P.*	
Rule	
1	93-8001, 93-8002, 93-8003, 93-8017
2	93-8022
3	93-8019, R. S. C. M. XXIV
4	93-8005, 93-8019
5	93-8004
6	93-8005, 93-8006, 93-8012, 93-8015, 93-8019
7	93-5607, 93-8011, 93-8012, 93-8014, M. R. Civ. P. 62(a), 62(d)
8	93-8013
9, 10, and 25	93-5504 to 93-5509, incl., 93-5608, 93-5707, 93-8018, 93-8019, 93-8021 R. S. C. M. VII, VIII, IX, XVIII subd. 3
11	93-8019, R. S. C. M. VI
12	93-8020
13	93-8016
14	93-8023
15	93-8024
16	93-8025
17	R. S. C. M. IV
19	R. S. C. M. I
20	R. S. C. M. III (1st par.)
22	R. S. C. M. XI
23	R. S. C. M. X
26	R. S. C. M. II subd. 4, III (1st par.)
27	R. S. C. M. II
29	93-5702, R. S. C. M. XII
32	R. S. C. M. XIX
33	R. S. C. M. XVIII
34	R. S. C. M. XV

35	R. S. C. M. XIV, XXI, XXII
37	R. S. C. M. XVII
39	R. S. C. M. XIII, XVI
40	R. S. C. M. XXIII
41	M. R. Civ. P. 72, 93-5708, 93-9905 (3), 93-8001, 93-8002, 93-8013

* Montana Rules of Appellate Civil Procedure are abbreviated "M. R. App. Civ. P."

** Rules of the Supreme Court of Montana are abbreviated "R. S. C. M." Montana Rules of Civil Procedure are abbreviated "M. R. Civ. P."

Table C. List of Statutes and Rules Superseded, in Whole or in Part, or Amended, by Designated Rules of Appellate Civil Procedure.

Statutes (R. C. M. 1947, sections)	M. R. App. Civ. P. Rule
93-5504 to 93-5509, incl.	9, 10, 25
93-5607	7
93-5608	9, 10, 25
93-5702	29
93-5707	9, 10, 25
93-5708	41
93-8001	1, 41
93-8002	1, 41
93-8003	1
93-8004	5
93-8005	4, 6
93-8006	6
93-8011	7
93-8012	6, 7
93-8013	8, 41
93-8014	7
93-8015	6
93-8016	13
93-8017	1
93-8018	9, 10, 25
93-8019	4, 6, 9, 10, 11, 25
93-8020	12
93-8021	9, 10, 25
93-8022	2
93-8023	14
93-8024	15
93-8025	16
93-9905 (3)	41

**Rules of the Supreme
Court of Montana**

I	19
II	26, 27

Table C

RULES OF APPELLATE CIVIL PROCEDURE

III (1st par.)	20, 26
IV	17
VI	11
VII	9, 10, 25
VIII	9, 10, 25
IX	9, 10, 25
X	23
XI	22
XII	29
XIII	39
XIV	35
XV	34
XVI	39
XVII	37
XVIII	9, 10, 25, 33
XIX	32
XXI	35
XXII	35
XXIII	40
XXIV	3

Montana Rules of
Civil Procedure

62(a)	7
62(d)	7
72	41

MONTANA CRIMINAL CODE OF 1973

TITLE 94

1947 REVISED CODES OF MONTANA

Effective January 1, 1974

Containing

TITLE 94, REVISED CODES OF MONTANA, THE
CRIMINAL CODE OF 1973, AS AMENDED THROUGH
THE 44TH LEGISLATURE IN 1975

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana



Copyright © 1973, 1974 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

Copyright © 1976 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

FOREWORD

This pamphlet contains all of Title 94, Revised Codes of Montana, the Criminal Code of 1973, as enacted or amended by Chapter 513, Laws of 1973, and as amended through the 1975 Session of the Legislature. The new Criminal Code was prepared by the Criminal Law Study Commission created by Chapter 103, Laws of 1963, acting under the chairmanship of the Honorable Wesley Castle, Associate Justice of the Supreme Court of Montana. The Code became effective January 1, 1974.

Title 94 contained herein completely replaces the original Title 94 of the Revised Codes of Montana, 1947, as heretofore amended. As a result of Chapter 513, Laws of 1973, every section previously contained in old Title 94 is either repealed, renumbered in accordance with the arrangement and section-numbering system of new Title 94, or transferred to some other title of the Revised Codes.

Three different 1973 acts that were not part of the Criminal Code of 1973 properly belong in the title on criminal offenses. The compiler has given these acts section numbers that are consistent with the arrangement and section-numbering system of the new Criminal Code, and they appear in this pamphlet.

Included in this pamphlet are Source notes and Commission Comments on the various sections of the new Criminal Code. These notes and comments were prepared by the Criminal Law Study Commission and have been revised and edited by Professor Larry M. Elison, School of Law, University of Montana, who served as Vice-Chairman and Reporter of the Commission.

A Cross-Reference Table appears in this pamphlet, beginning on page 166. This Table, based on a table prepared by the Criminal Law Study Commission, shows, for each section of old Title 94, either the place to which the section has been transferred by renumbering or the sections either in new Title 94 or other titles of the Revised Codes which cover the same subject matter.

An index to new Title 94 begins on page 197.

TITLE 94

CRIMINAL CODE

- Chapter 1. General preliminary provisions, 94-1-101 to 94-1-107.
2. General principles of liability, 94-2-101 to 94-2-113.
3. Justifiable use of force—exoneration, 94-3-101 to 94-3-112.
4. Inchoate offenses, 94-4-101 to 94-4-103.
5. Offenses against the person.
- Part 1. Homicide, 94-5-101 to 94-5-106.
2. Assault, 94-5-201 to 94-5-203.
3. Kidnaping, 94-5-301 to 94-5-305.
4. Robbery, 94-5-401.
5. Sexual crimes, 94-5-501 to 94-5-506.
6. Offenses against the family, 94-5-601 to 94-5-624.
6. Offenses against property.
- Part 1. Criminal mischief and arson, 94-6-101 to 94-6-105.
2. Criminal trespass and burglary, 94-6-201 to 94-6-205.
3. Theft and related offenses, 94-6-301 to 94-6-314.
7. Offenses against public administration.
- Part 1. Bribery and corrupt influence, 94-7-101 to 94-7-105.
2. Perjury and other falsification in official matters, 94-7-201 to 94-7-210.
3. Obstructing governmental operations, 94-7-301 to 94-7-309.
4. Official misconduct, 94-7-401.
5. Treason, flags and related offenses, 94-7-502 to 94-7-504.
8. Offenses against public order.
- Part 1. Offensive, indecent and inhumane conduct, 94-8-101 to 94-8-104, 94-8-106 to 94-8-114.
2. Weapons, 94-8-201 to 94-8-226.
3. Lotteries, 94-8-301 to 94-8-311.
4. Gambling, 94-8-401 to 94-8-431.

CHAPTER 1

GENERAL PRELIMINARY PROVISIONS

- Section 94-1-101. Short title.
- 94-1-102. General purposes and principles of construction.
- 94-1-103. Application to offenses committed before and after enactment.
- 94-1-104. Other limitations on applicability.
- 94-1-105. Classification of offenses.
- 94-1-106. General time limitations.
- 94-1-107. Periods excluded from limitation.

94-1-101. Short title. This act shall be known and may be cited as the “Criminal Code of 1973.”

History: En. 94-1-101 by Sec. 1, Ch. 513, Code, to codify and generally revise the L. 1973. statutes concerning criminal offenses; and providing an effective date.

Title of Act

An act creating a Montana Criminal

94-1-102. General purposes and principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice.

History: En. 94-1-102 by Sec. 1, Ch. 513, L. 1973.

Source: Subdivisions (1) (a) to (1) (d) substantially the same as Illinois Criminal Code, Chapter 38, section 1-2. Subsection (2) is identical to Revised Codes of Montana 1947, section 94-101.

Commission Comment

This section expresses the legislative purpose of the code and provides a convenient reference for the interpretation of its more specific provisions. See also the provisions of the Bill of Rights of the Montana constitution [Art. II, 1972 Constitution] which outline the basic concepts of criminal law.

DECISIONS UNDER FORMER LAW

Liberal Construction

Under section 12-202 and former section 94-101, the rule that statutes in derogation of common law be strictly construed did not apply to code provisions, liberal construction being the rule as to all; prior decisions strictly construing a repealed section relating to the incurrence of liability for debts of corporation by directors for failure to file annual report with county, were overruled. *Continental Supply Co. v. Abell*, 95 M 148, 24 P 2d 133.

Sections 59-518 to 59-520, defining "nepotism" and prohibiting public officers, boards or commissions from appointing relatives to a position of trust or emolument, and providing punishment by fine and imprisonment in the county jail, were not strictly construed in view of former section 94-101. *State ex rel. Kurth v. Grinde*, 96 M 608, 614, 32 P 2d 15.

94-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code shall apply to any offense defined in this code and committed after the effective date thereof.

(2) Unless otherwise expressly provided, or unless the context otherwise requires, the provisions of this code shall govern the construction of and punishment for any offense defined outside of this code and committed after the effective date thereof, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before the effective date thereof. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

History: En. 94-1-103 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as New York Penal Code, Title 39, section 5.05; also derived from Revised Codes of Montana 1947, section 94-103.

Commission Comment

This section is intended to provide for

the transition from the old Criminal Code to the new Criminal Code. The provisions of the new Criminal Code apply only to offenses committed after its effective date [January 1, 1974]. See also Section 33 [Chapter 513, Laws of 1973 (Effective Date note following sec. 94-8-431)].

94-1-104. Other limitations on applicability. (1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment or decree.

History: En. 94-1-104 by Sec. 1, Ch. 513, L. 1973.

Source: Subsection (1) identical to Illinois Criminal Code, Chapter 38, section 1-4; subsection (2) identical to Illinois Criminal Code, Chapter 38, section 1-3; also derived from Revised Codes of Montana 1947, sections 94-103, 94-106 and 94-108.

Commission Comment

It has been contended that the victim of a criminal offense should be denied civil relief until he has performed his public duty to prosecute the offender. The English courts developed the rule that a civil action cannot be maintained until after prosecution, if the offense involved a felony.

Legislatures in a number of states have reached the opposite conclusion declaring the criminal and civil aspects to be independent. See R. C. M. 1947, section 94-106. This appears to be the prevailing American rule and is continued by this section.

Subsection (2) is intended to complete the process of replacing the common law definitions of offenses with statutory definitions—a process which has continued for many years.

The language that the provision does not affect the power of a court to “employ any sanction authorized by law” is intended to preserve the power of courts of justice to punish for contempt and the authority of properly constituted courts of justice to act as courts martial. See R. C. M. 1947, section 94-108.

DECISIONS UNDER FORMER LAW

Ordinance Violation

An action by a city instituted in its police court by the filing of a complaint charging a violation of one of its ordinances, and seeking the imposition of a fine, was criminal in its nature; the court acquired jurisdiction over defendant by the issuance and service of a warrant of arrest. *State ex rel. Marquette v. Police Court*, 86 M 297, 309, 283 P 430, modifying *City of Bozeman v. Nelson*, 73 M 147, 237 P 528.

Removal from Office

A proceeding for the summary removal of a county attorney for misconduct, even though instituted by a private person, was a public proceeding, and, though it was summary in its nature, was classed as a prosecution for crime under former section 94-112. *State ex rel. McGrade v. District Court*, 52 M 371, 373, 157 P 1157.

94-1-105. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall be governed by this code.

History: En. 94-1-105 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The actual sentence imposed upon con-

viction determines the classification of the offense. The potential sentence determines the court's jurisdiction at the commencement of the action and is determinative of the commencement of the period of limitations. The section is at least par-

tially contra the holding in *State v. Atlas*, 75 M 547, 551, 244 P 477 (1926), in which the Montana supreme court held that the

potential sentence determines the grade of the crime.

DECISIONS UNDER FORMER LAW

Concurrent Sentences

Where defendant was convicted of felony under first portion of consolidated information and of misdemeanor under second portion and the trial court adjudged that the sentences be served concurrently, the felony sentence was to be served in state prison with credit for misdemeanor fine to be given at the same time, and any remaining time under the misdemeanor at end of the state prison term was to be served in county jail. *State v. Bogue*, 142 M 459, 384 P 2d 749.

Federal Rule

Under federal law, the maximum potential punishment determines whether an offense constitutes a felony or misdemeanor as contra-distinguished from the prevailing Montana rule under which crimes are classified as felonies or misde-

meanors by the punishment actually imposed. *State ex rel. Anderson v. Fousek*, 91 M 448, 8 P 2d 791.

Limitation of Actions

The potential maximum sentence was determinative of the grade of the crime until sentence was imposed where the offense was neither divisible into degrees nor inclusive of lesser offenses and was punishable as either a felony or misdemeanor in the discretion of the court or jury; if the sentence imposed was other than imprisonment in the state prison the offense was considered a misdemeanor under former section 94-114, but the reduction was not retroactive so as to make the misdemeanor period of limitations applicable. *State v. Atlas*, 75 M 547, 244 P 477.

94-1-106. General time limitations. (1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided in this code, prosecutions for other offenses are subject to the following periods of limitation:

(a) a prosecution for any felony must be commenced within five (5) years after it is committed;

(b) a prosecution for a misdemeanor must be commenced within one (1) year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) If the aggrieved person is a minor or incompetent, then during the minority or incompetency or within one (1) year after the termination thereof.

(b) In any other instance, within one (1) year after the discovery of the offense by the aggrieved person, or by a person who has legal capacity to represent an aggrieved person, or has a legal duty to report the offense, and is not himself a party to the offense; or in the absence of such discovery, within one (1) year after the prosecuting officer becomes aware of the offense.

(4) An offense is committed either when every element occurs, or when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

History: En. 94-1-106 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Revised Codes of Montana 1947, sections 94-5702 and 94-

5703. Also derived from Revised Codes of Montana 1947, section 94-5701 and Illinois Criminal Code, Chapter 38, sections 3-5 and 3-6.

Commission Comment

This section describes the general time limitations on prosecutions; the extension thereof under certain conditions; and the exclusion of certain periods in the calculation of limitations.

Subsection (1) continues the present Montana provision that no time limit exists with respect to homicide.

Subsection (2) similarly preserves the present general time limitations in Montana of five (5) years for all other felonies and one year for misdemeanors.

Subsection (3) is designed to permit increases in the general time limitations with respect to certain offenses which are capable of being readily concealed by the offender, from both the victim and the law enforcing authorities, over substantial periods of time and beyond the general limitations applicable to those offenses.

Subsection (4) states the general rule that the period of limitation does not start in the case of a "continuing offense" until the last act of the offense is performed.

The rule would be applicable to a series of related acts constituting a single course of conduct extended over a period of time, often occurring in cases of embezzlement, conspiracy, bigamous cohabitation, and nuisance.

When the limitation period has not run on the offense charged, but has run on an offense included therein, the general rule is that the defendant cannot be convicted of the included offense, since to hold otherwise would permit the prosecutor, by charging a more serious inclusive offense not barred by the limitation, to circumvent the limitation on the lesser offense. (*State v. Chevin*, 234 SW 2d 563 (Mo. 1955)).

Unless time is a material ingredient in the offense or in charging the same, it is only necessary to prove that it was committed prior to the finding of the indictment or filing the information or complaint. (*State v. Rogers*, 31 M 1, 4, 77 P 293). The general statute of limitations applicable to misdemeanors should not be enlarged beyond what its plain language imports, and whenever the exceptions embodied in subsection (3) are invoked, the case should clearly and unequivocally fit within the exceptions. (*State v. Clemens*, 40 M 567, 569, 107 P 896).

DECISIONS UNDER FORMER LAW

Exceptions

Former section 94-5703 was a general statute of limitations, applicable to misdemeanors, and an exception to it could not be enlarged beyond what its plain language imported; to invoke the exception, the case must clearly and unequivocally fall within it. *State v. Clemens*, 40 M 567, 569, 107 P 896.

Felony or Misdemeanor

The maximum potential sentence determines the grade of the crime until

sentence is imposed; under former section 94-114 the imposition of a sentence other than imprisonment in state prison reduced the crime to a misdemeanor in cases where the offense was neither divisible into degrees nor inclusive of lesser offenses and punishment was within the discretion of the court or jury; but this did not operate retroactively so as to deprive the court of jurisdiction by making the misdemeanor limitations period applicable. *State v. Atlas*, 75 M 547, 244 P 477.

94-1-107. Periods excluded from limitation. The period of limitation does not run:

- (1) during any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state; or
- (2) during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or
- (3) during a prosecution pending against the offender for the same conduct, even if the indictment, complaint or information which commences the prosecution is dismissed.

History: En. 94-1-107 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Revised Codes of Montana 1947, section 94-

5704 and Illinois Criminal Code, Chapter 38, section 3-7.

Commission Comment

Certain occurrences should stop the period from running. Subsection (1) tolls the statute for the offender who is absent from this state, or absents himself

from his usual place of abode and makes some effort to conceal himself.

Subsection (3) is intended to preserve the substance of the former Montana provision which tolled that statute while proceedings were pending.

Note that the phrase "same conduct" is intentionally broad.

DECISIONS UNDER FORMER LAW

Circumstantial Evidence

In 1922, testimony that defendant had taken a trip to Ireland where he had visited several cities created an inference sufficient to establish that the defendant

had been absent from the state for at least twenty days, and satisfied the state's burden of proof under former section 94-5704. *State v. Knilans*, 69 M 8, 220 P 91.

CHAPTER 2

GENERAL PRINCIPLES OF LIABILITY

Section 94-2-101.	General definitions.
94-2-102.	Voluntary act.
94-2-103.	General requirements of criminal act and mental state.
94-2-104.	Absolute liability.
94-2-105.	Causal relationship between conduct and result.
94-2-106.	Accountability for conduct of another.
94-2-107.	When accountability exists.
94-2-108.	Separate conviction of person accountable.
94-2-109.	Responsibility.
94-2-110.	Substitutes for negligence and knowledge.
94-2-111.	Consent as a defense.
94-2-112.	Criminal responsibility of corporations.
94-2-113.	Accountability for conduct of corporation.

94-2-101. General definitions. Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true; or

(b) fail to correct a false impression which the offender previously has created or confirmed; or

(c) prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently; or

(b) for such a period as to appropriate a portion of its value; or

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two (2) persons of the same sex, or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(18) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any person or entity in whose welfare he is interested.

(20) "He, she, it." The singular term shall include the plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule, regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any controlled substance as defined in chapter 3 of Title 54, R. C. M. 1947, and alcoholic beverage including but not limited to any beverage containing one-half of one per centum ($\frac{1}{2}$ of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum ($\frac{1}{2}$ of 1%) of alcohol by volume.

(26) "An involuntary act" means any act which is:

- (a) a reflex or convulsion; or
- (b) a bodily movement during unconsciousness or sleep; or
- (c) conduct during hypnosis or resulting from hypnotic suggestion; or
- (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"—A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(29) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(30) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

(32) "Negligently"—A person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(33) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(34) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(35) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate occupied structure.

(36) "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(38) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink, samples, cultures, micro-organisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect or record secret scientific, technical, merchandising production or management information, designed process, procedure, formula, invention or improvement.

(50) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(51) "Public place" means any place to which the public or any substantial group thereof has access.

(52) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a juror, adviser, consultant, administrator, executor, guardian or court-appointed fiduciary; but the term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(53) "Purposely"—A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(54) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ and includes serious mental illness or impairment.

(55) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(56) "Sexual intercourse" means penetration of the vulva, anus or mouth of one person by the penis of another person, or penetration of the vulva or anus of one person by any body member of another person or penetration of the vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or restraint; or

(c) commit any criminal offense; or

(d) accuse any person of criminal offense; or

- (e) expose any person to hatred, contempt or ridicule; or
- (f) harm the credit or business repute of any person; or
- (g) reveal any information sought to be concealed by the person threatened; or
- (h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or
- (i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or
- (j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars (\$150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars (\$150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding.

History: En. 94-2-101 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 190, L. 1975; amd. Sec. 1, Ch. 405, L. 1975; amd. Sec. 1, Ch. 443, L. 1975.

Source: (1) Identical to Illinois Criminal Code 1961, Chapter 38, section 2-2.

(2) Identical to Illinois Criminal Code 1961, Chapter 38, section 2-3.

(3) Identical to the Model Penal Code 1962, section 240.0(8).

(4) Identical to the Model Penal Code 1962, section 240.0(1).

(5) Substantially the same as the Model Penal Code 1962, section 210.0(2).

(6) New.

(7) New.

(8) Identical to Illinois Criminal Code 1961, Chapter 38, section 2-4.

(9) Identical to Illinois Criminal Code 1961, Chapter 38, section 2-5.

(10) Substantially the same as Illinois Criminal Code 1961, Chapter 38, section 2-14.

(11) Identical to Illinois Criminal Code 1961, Chapter 38, section 15-4.

(12) Identical to Minnesota Statutes Annotated, Title 40A, section 609.765.

(13) Model Penal Code 1962, section 223.0(1).

(14) New. This definition covers homosexuality and bestiality.

(15) New.

(16) New.

(17) Illinois Criminal Code 1961, Chapter 38, section 2-8.

(18) Identical to the Model Penal Code 1962, section 240.0(2).

(19) Identical to the Model Penal Code 1962, section 240.0(19).

(20) Revised Codes of Montana 1947, section 19-103.

(21) Model Penal Code 1962, section 251.2.

(22) Model Penal Code 1962, section 210.0(1).

(23) New.

(24) New.

(25) Revised Codes of Montana 1947, section 94-35-107.

(26) Substantially the same as the Model Penal Code 1962, section 2.01.

(27) Substantially the same as the New York Penal Law 1965, section 10.00(16).

(28) Substantially the same as the Model Penal Code 1962, sections 1.13(13), 2.02.

(29) Identical to the New York Penal Law 1965, section 130.00(5). Revised Codes of Montana 1947, section 94-4101(2) specified that the degree of mental deficiency be such as to render the victim "incapable of giving legal consent." Formulation in terms of capacity to give legal consent is circular and was rejected as failing to provide a meaningful guide. This definition limits criminality to mental disease or defect so serious as to render the vic-

tim "incapable of appreciating the nature of his conduct." A condition such as nymphomania which affects only the woman's capacity to "control herself sexually" where there is no physical or mental disability will not destroy consent, otherwise valid.

(30) Substantially the same as the New York Penal Law 1965, section 130.00(6). The victim need not be unconscious to be mentally incapacitated.

(31) New.

(32) New York Penal Law 1965, section 15.05(4); Model Penal Code 1962, sections 1.13(15), 2.02(2d).

(33) Identical to the Model Penal Code 1962, section 223.0(5); Illinois Criminal Code 1961, Chapter 38, section 15-7.

(34) Substantially the same as Illinois Criminal Code 1961, Chapter 38, section 15-8.

(35) Model Penal Code 1962, section 220.1(4).

(36) New.

(37) Model Penal Code 1962, section 1.04(1).

(38) Model Penal Code 1962, section 2.42.6(1).

(39) Identical to the Model Penal Code 1962, section 240.0(4).

(40) Substantially the same as Illinois Criminal Code 1961, Chapter 38, section 2-21.

(41) Identical to Illinois Criminal Code 1961, Chapter 38, section 15-2.

(42) Identical to the Model Penal Code 1962, section 240.0(5).

(43) Substantially the same as Illinois Criminal Code 1961, Chapter 38, section 2-13.

(44) Identical to the Model Penal Code 1962, section 240.0(6).

(45) Substantially the same as Illinois Criminal Code 1961, Chapter 38, section 2-15.

(46) Substantially the same as the New York Penal Law 1965, section 130.00(7).

(47) Substantially the same as the Model Penal Code 1962, section 2.01(4).

(48) Substantially the same as the New York Penal Law 1965, section 140.0(1).

(49) Substantially the same as Illinois Criminal Code 1961, Chapter 38, section 15-1.

(50) Model Penal Code 1962, section 223.0(7).

(51) Model Penal Code 1962, section 251.2(1).

(52) Substantially the same as the Model Penal Code 1962, section 240.0(7); New York Penal Law 1965, section 10.00(15).

(53) Substantially the same as the Model Penal Code 1962, section 2.02(2a), (6).

(54) Substantially the same as the Model Penal Code 1962, section 210.0(3).

(55) Identical to the New York Penal Law 1965, section 130.00(3).

(56) New York Penal Law 1965, section 130.00(1), (2), (3). This definition includes abnormal intercourse, either homosexual or heterosexual by mouth or anus, as well as normal genital copulation. The definition is broader than former law, although "the infamous crime against nature" of Revised Codes of Montana 1947, section 94-4118 probably covers most abnormal sexual acts. The definition also adheres to the "slight penetration" rule of Revised Codes of Montana 1947, section 94-4103.

(57) Identical to Illinois Criminal Code 1961, Chapter 38, section 2-20.

(58) Substantially the same as Illinois Criminal Code 1961, Chapter 38, section 2-21.

(59) New.

(60) Identical to Illinois Criminal Code 1961, Chapter 38, section 15-6.

(61) New.

(62) New.

(63) Substantially the same as Illinois Criminal Code 1961, Chapter 38, section 15-5.

(64) Michigan Property Crimes Code 1967, section 3201.

(65) New.

(66) New York Penal Law 1965, section 10.00(13).

(67) Revised Codes of Montana 1947, section 94-9001.

(68) Deleted by Sec. 1, Ch. 405, Laws of 1975. See sec. 94-5-501(2).

Compiler's Notes

Section 94-2-101 was amended three times in 1975, once by Ch. 190, once by Ch. 405 and once by Ch. 443. The compiler has made a composite section incorporating the changes made by each chapter.

Amendments

Chapter 190, Laws of 1975, substituted "controlled substance as defined in chapter 3 of Title 54, R. C. M. 1947, and alcoholic beverage" in subdivision (25) for "substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability"; and made a minor change in punctuation.

Chapter 405, Laws of 1975, deleted former subdivision (68) which read: "Without consent" means: (a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping, to be inflicted on anyone; or (b) the victim is incapable of consent because he is: (i) mentally defective or incapacitated; or (ii) physically helpless; or (iii) less than sixteen (16) years old". See sec. 94-5-501(2).

Chapter 443, Laws of 1975, inserted the second sentence in subdivision (28); and made a minor change in punctuation.

DECISIONS UNDER FORMER LAW

Subdivision (15)—Federal Law

Under federal law, the maximum potential punishment determines whether an offense constitutes a felony or misdemeanor as contra-distinguished from the prevailing Montana rule under which crimes are classified as felonies or misdemeanors by the punishment actually imposed. *State ex rel. Anderson v. Fousek*, 91 M 448, 8 P 2d 791, 84 ALR 303.

—Felony or Misdemeanor

The potential maximum sentence determined the grade of the crime until sentence was imposed where the offense was neither divisible into degrees nor inclusive of lesser offenses and punishment was in the discretion of the court or jury; if the sentence imposed was other than imprisonment in the state prison, the offense was considered a misdemeanor under former section 94-114. *State v. Atlas*, 75 M 547, 244 P 477.

Subdivision (25)—Vodka

While former section 94-35-107 did not use the word vodka, any beverage containing more than one-half of one per cent of alcohol was an intoxicating liquor and

court could take judicial notice of commonly accepted and generally understood definition of word "vodka" under section 93-501-1. *State v. Wild*, 130 M 476, 305 P 2d 325, 334.

Subdivision (28)—Fraudulent Intent

Under former section 94-118 proof of intent to defraud could consist of reasonable inferences drawn from affirmatively established facts; defendant who was sufficiently conscious to recognize fraudulent nature of check was of adequate mental ability to form an intent to defraud by issuing the check, knowing of its fraudulent nature. *State v. Cooper*, 146 M 336, 406 P 2d 691.

—General Intent

Effect of former section 94-105 was to make any required "intent to defraud" a general, rather than a specific, intent. *State v. Cooper*, 146 M 336, 406 P 2d 691.

—Instructions to Jury

Under former section 94-117 an instruction charging the jury that when an unlawful act is shown to have been deliberately committed for the purpose of

injuring another it is presumed to have been committed with a malicious and guilty intent, in that the law presumes that a person intends the ordinary consequences of any voluntary act committed by him, may mislead the jury, and should not be given in a prosecution for assault in the first-degree, the very gist of which is the intent with which it was committed. *State v. Schaefer*, 35 M 217, 88 P 792, distinguished in 135 M 139, 147, 337 P 2d 924.

—Manifestation of Intent

Evidence that defendant accosted a nine-year-old girl on the street and asked her to come to his room and play with him, on arriving there locked the door, asked her to remove her dress and then placed his hand upon her shoulder in an attempt to remove her dress, was sufficient to warrant a finding by the jury that the defendant intended to arouse his sexual desires in a depraved manner. *State v. Kocher*, 112 M 511, 119 P 2d 35.

—Presumption of Intent

Intent is conclusively presumed from the occurrence of a statutory offense such as collection of unlawful fees from a county. *State ex rel. Rowe v. District Court*, 44 M 318, 119 P 1103.

—Specific Intent

Under former section 94-118, finding of jury that defendant was able to form specific intent to commit first-degree assault as required by statute was supported by evidence that, although intoxicated, defendant turned off lights inside apartment, reached into a nearby drawer and prepared revolver for action, surrendered to police, walked out of apartment under own power with hands in air and after arrest had no difficulty recounting recent events to police. *State v. Lukus*, 149 M 45, 423 P 2d 49.

Subdivision (29)—Burden of Proof

Under former section 94-119, the burden of proving insanity pleaded by a defendant charged with a crime was upon the defendant; an instruction that the state was required to prove beyond a reasonable doubt that defendant was sane at the time of the commission of the offense was error. *State v. Vetter*, 76 M 574, 248 P 179; *State v. DeHaan*, 88 M 407, 292 P 1109.

—Definition of Insanity

Under former section 94-119, insanity constituted any defect, weakness or disease of the mind which rendered it incapable of entertaining, in the particular instance, the criminal intent which was an ingredient of all crimes. *State v. Narich*, 92 M 17, 9 P 2d 477.

—Evidence of Insanity

Evidence that defendant's reason had been clouded by intoxication during the earlier hours of the day on which the homicide was committed, and that he suffered from periodic heart attacks, did not warrant an instruction upon the question of his sanity. *State v. Kuun*, 55 M 436, 178 P 288.

Despite expert testimony that the defendant was suffering from epilepsy, rendering him incapable of knowing of or remembering his actions during the incident giving rise to prosecution for second degree assault, evidence that defendant, after striking his victim with a gun, warned her not to say anything about it, concealed himself thereafter, and one month later detailed the entire event to a medical expert, was sufficient to support guilty verdict. *State v. DeHaan*, 88 M 407, 292 P 1109.

Under former section 94-201, defendant was entitled to plead insanity as bar to conviction for first degree murder, but failed to sustain burden of proof by preponderance of evidence, as required by statute, in view of evidence that his activities on the day of shooting were normal, that he was quite calm after shooting occurred and that he knew right from wrong at the time of the shooting, according to a psychiatrist. *State v. Sanders*, 149 M 166, 424 P 2d 127.

—Instructions to Jury

Trial courts in instructing juries on defense of insanity should make their instructions as plain and simple as possible, incorporate therein the appropriate code sections, supplementing the definition of insanity as indicated in the case of *State v. Peel*, 23 M 358, 59 P 169, and avoid numerous instructions which may be confusing and serve no useful purpose. *State v. Narich*, 92 M 17, 9 P 2d 477.

—Opinion of Lay Witness

Under former section 94-119, lay witnesses' opinion testimony as to defendant's sanity prior to the event giving rise to defendant's prosecution for homicide was admissible where lay witnesses were intimately acquainted with the defendant as in many instances such testimony is more helpful in arriving at conclusion as to defendant's sanity than expert opinion testimony based on hypothetical questions. *State v. Simpson*, 109 M 198, 95 P 2d 761, overruled on other grounds in *State v. Knox*, 119 M 449, 453, 175 P 2d 774.

Subdivision (30)—Insanity

Evidence that defendant's reason had been clouded by intoxication during the earlier hours of the day on which the homicide was committed, and that he suffered from periodic heart attacks, did

not warrant an instruction upon the question of his sanity. *State v. Kuum*, 55 M 436, 178 P 288.

Subdivision (31)—Federal Law

Under federal law, the maximum potential punishment determines whether an offense constitutes a felony or misdemeanor as contra-distinguished from the prevailing Montana rule under which crimes are classified as felonies or misdemeanors by the punishment actually imposed. *State ex rel. Anderson v. Fousek*, 91 M 448, 8 P 2d 791, 8 ALR 303.

—Felony or Misdemeanor

The potential maximum sentence determined the grade of the crime until sentence was imposed where the offense was neither divisible into degrees nor inclusive of lesser offenses and punishment was within the discretion of the court or jury; if the sentence imposed was other than imprisonment in the state prison, the offense was considered a misdemeanor under former section 94-114. *State v. Atlas*, 75 M 547, 244 P 477.

Subdivision (32)—Criminal Negligence

In prosecution for involuntary manslaughter under former section 94-2507, criminality of the act resulting in death was established if the act was done negligently in such a manner as to evince a disregard for human life or an indifference to consequences irrespective of whether unlawful act was malum in se or merely malum prohibitum. *State v. Strobel*, 130 M 442, 304 P 2d 606, overruled on other grounds, 134 M 519, 525, 333 P 2d 1017.

—Evidence of Negligence

Whether defendant, while intoxicated and in the act of exhibiting his revolver to the deceased, also under the influence of liquor, exercised that usual and ordinary caution in handling the weapon made necessary by former section 94-2511 to render the killing excusable, was one for determination by the jury. *State v. Kuum*, 55 M 436, 178 P 288, distinguished in 85 M 544, 546, 281 P 352.

Evidence in a prosecution for involuntary manslaughter arising out of an automobile accident in city at nighttime, showing defendant driving at 15 miles per hour, that he did not see deceased, that he had not been drinking, that he was looking straight ahead but saw nothing to indicate the presence of the pedestrian, etc., was insufficient to warrant a verdict of guilty of such reckless disregard of human life as was required to constitute the offense under former section 94-2507, subdivision 2 and the information should have been dismissed. *State v. Powell*, 114 M 571, 576, 138 P 2d 949, distinguished in 134 M 519, 522, 333 P 2d 1017.

Evidence was sufficient to warrant jury finding under former section 94-2511 that "usual and ordinary caution" was not exercised where doctor testified that basal skull fracture and fatal transection of liver were caused by an extensive and severe force. *State v. Henrich*, 159 M 365, 498 P 2d 124.

Subdivision (37)—Contempt of Court

A contempt of court, punishable by fine or imprisonment, or both, was a public offense under former section 94-112. *State ex rel. Flynn v. District Court*, 24 M 33, 35, 60 P 493.

—Ordinance Violation

The threatened violation of a town ordinance was not a "public offense" within the meaning of former section 94-112. *State ex rel. Streit v. Justice Court*, 45 M 375, 380, 123 P 405.

A valid city ordinance, passed by the municipality with the design of the legislature was a "law" as that term was used in former section 94-112, which defined a public offense as an act committed or omitted in violation of a law, and such ordinance had, within the territorial jurisdiction of the municipality, the same force and was to be treated as a legislative act. *State ex rel. Marquette v. Police Court*, 86 M 297, 309, 283 P 430.

An action by a city instituted in its police court by the filing of a complaint charging a violation of one of its ordinances, and seeking the imposition of a fine, was criminal in nature; the court acquired jurisdiction over defendant by the issuance and service of a warrant of arrest. *State ex rel. Marquette v. Police Court*, 86 M 297, 283 P 430, modifying *City of Bozeman v. Nelson*, 73 M 147, 237 P 528.

—Removal from Office

A proceeding for the summary removal of a county attorney for misconduct, even though instituted by a private person, was a public proceeding, and, though it was summary in its nature, was classified as a prosecution for a crime under former section 94-112. *State ex rel. McGrade v. District Court*, 52 M 371, 157 P 1157.

An officer (county clerk) charged with willful neglect of duty was not entitled to jury trial in proceeding for his removal from office under former section 94-112. *State ex rel. Bullock v. District Court*, 62 M 600, 602, 205 P 955.

Subdivision (49)—Promissory Notes

Under former section 94-2710, an instruction in a prosecution for the larceny of promissory notes that the amount of money due on the notes or secured to be paid thereby and remaining unsatisfied was their value, was correct; instruction

offered by defendant to the effect that evidence relating to the instrument should be disregarded because it had not been shown that they had any value, was properly refused where one of the notes was introduced in evidence and the value of the other was shown by books of account, thus making out a prima facie case for the state. *State v. Cassill*, 71 M 274, 279, 229 P 716.

Subdivision (53)—Fraudulent Intent

Under former section 94-118 proof of intent to defraud could consist of reasonable inferences drawn from affirmatively established facts; defendant who was sufficiently conscious to recognize fraudulent nature of check was of adequate mental ability to form an intent to defraud by issuing the check, knowing of its fraudulent nature. *State v. Cooper*, 146 M 336, 406 P 2d 691.

—General Intent

Effect of former section 94-105 was to make any required "intent to defraud" a general, rather than a specific intent. *State v. Cooper*, 146 M 336, 406 P 2d 691.

—Instructions to Jury

Under former section 94-117 an instruction charging the jury that when an unlawful act is shown to have been deliberately committed for the purpose of

injuring another it is presumed to have been committed with a malicious and guilty intent, in that the law presumes that a person intends the ordinary consequences of any voluntary act committed by him, may mislead the jury, and should not be given in a prosecution for assault in the first-degree, the very gist of which offense is the intent with which it was committed. *State v. Schaefer*, 35 M 217, 88 P 792, distinguished in 135 M 139, 147, 337 P 2d 924.

—Manifestation of Intent

Evidence that defendant accosted a nine-year-old girl to whom he was a total stranger on the street, invited her to come to his room and play with him, on arriving there locked the door, asked her to remove her dress and then placed his hand upon her shoulder in an attempt to remove her dress, was sufficient to warrant a finding by the jury that the defendant intended to arouse his sexual desires in a depraved manner. *State v. Kochev*, 112 M 511, 119 P 2d 35.

—Presumption of Intent

Intent is conclusively presumed from the occurrence of a statutory offense such as collecting unlawful fees from a county. *State ex rel. Rowe v. District Court*, 44 M 318, 119 P 1103.

94-2-102. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing. Possession is a voluntary act if the offender knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have been able to terminate his control.

History: En. 94-2-102 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, sections 4-1 and 4-2.

Commission Comment

The minimum elements of any offense (other than one in which absolute liability for an act alone is imposed) are described as a voluntary act and a specified state of mind. See R. C. M. 1947, section 94-117.

The word "act" is sometimes used loosely to describe not only the person's physical movement, but also certain attendant circumstances and the consequence of the movement. However, in the interest of accurate expression these three components should be separately designated, and "act" should be limited to the relevant physical movements. A further narrowing of the use of the term in a criminal code arises from the fact that a muscular movement may be voluntary ("willed") or involuntary—a physical reflex or com-

pelled motion which is not accompanied by the volition of the person making the motion. Only the voluntary act gives rise to criminal liability. In this code, "act" is used in the narrow sense and with the accompanying mental state, is referred to as "conduct." An "omission" to take some action required by law is distinguished sometimes from an "act," since it denotes lack of physical movement. However, an omission necessarily is defined by describing the act of commission which is omitted; and if the distinction is made, then the phrase "act or omission" must be used each time reference is made to a person's physical behavior, unless the reference is only to a positive movement, or only to the lack of required movement. Consequently, the use of "act" to include "omission" seems reasonable, and clearly is more convenient. Perkins, "Negative Acts in Criminal Law," 22 Iowa L. Rev. 95 at 107 (1934). This usage, of course, does not preclude the specific reference to an

omission when the failure to perform a duty imposed by law is the substance of a particular offense. The criminal law is concerned only with the voluntary phase—the purposeful or negligent omission to perform a duty which the person is capable of performing.

Possession is another aspect of behavior which, while it does not necessarily involve a physical movement is conveniently brought within the definition of “act” when it refers to maintaining control of a physical object. Again, only the voluntary aspect is significant—a consciousness of purpose, derived from knowingly procuring or receiving the thing possessed, or awareness of control thereof for a sufficient time to enable the person to terminate his control. An examination of

the former Montana statutory provisions prohibiting possession indicates the suitability of this usage. Some of the provisions in the present law flatly prohibit possession of specified objects, without reference to any accompanying mental state. (E.g., section 94-8-211, concealed firearm; section 54-133, narcotics; section 94-8-404, gambling device; section 94-8-202, machine gun.) Others denounce possession with intention to accomplish a specified purpose, such as sale or the commission of another offense. (E.g., section 94-6-205, possession of burglary tools; section 94-8-110, obscenity.) A few analogous situations involve the ownership or possession of real property used for prohibited purposes.

94-2-103. General requirements of criminal act and mental state. (1)

A person is not guilty of an offense, other than an offense which involves absolute liability unless, with respect to each element described by the statute defining the offense, he acts while having one (1) of the mental states described in sections 94-2-101 (28), 94-2-101 (32) and 94-2-101 (53).

(2) If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such.

(4) A person’s reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him, and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him; or

(b) he acts in reliance upon a statute which later is determined to be invalid; or

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation or order defining the offense, made by public officer or agency legally authorized to interpret such statute.

(5) If a person’s reasonable belief is a defense under subsection (4) of this section, nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense.

History: En. 94-2-103 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, sections 4-3 and 4-8; also derived from Model Penal Code, section 2.04.

Commission Comment

The accurate description of the mental states which are elements of the various specific offenses is one of the most difficult problems in the preparation of a criminal code.

In a number of other states, efforts have been made to simplify the description of mental states, by defining a small number of terms and using them uniformly throughout the criminal code, with appropriate qualifying language where necessary to describe accurately a particular offense. Subsection (2) provides a general rule for interpretation of statutory references to mental state in defining specific offenses. Often, a single mental state word, such as "knowingly" is placed in a position where grammatically it may apply to all elements of the offense. To so apply it for the purpose of legal interpretation seems logical, since the purpose that it shall not apply to certain elements of the offense may be expressed readily by a different sentence structure. Subsection (3) states the accepted rule that in the absence of a statutory requirement, knowl-

edge of the law is not an element of the offense. A person's liability for an offense does not depend upon his knowing that his conduct constitutes an offense, or knowing of the existence, meaning, or application of the defining statute. A reasonable reliance upon a statute later determined to be invalid, or upon an authoritative statutory interpretation, later determined to be invalid or erroneous is a defense. Clearly, the state should not punish as criminal, conduct which, according to a formally expressed statement of its duly authorized agents, is not illegal. Proof of the facts upon which such a defense is based should not be difficult, nor should determination of the reasonableness of the defendant's reliance; and since the enactment or interpretation relied upon would be of a public and official nature, collusion to avoid criminal liability seems unlikely. When ignorance or mistake is recognized as a defense the defendant may be convicted of an included offense which does not involve the mental state negated by the ignorance or mistake.

DECISIONS UNDER FORMER LAW

Criminal Negligence

In prosecution for involuntary manslaughter under former section 94-2507, criminality of the act resulting in death was established if the act was done negligently in such a manner as to evince a disregard for human life or an indifference to consequences irrespective of whether unlawful act was *malum in se* or merely *malum prohibitum*. *State v. Strobel*, 130 M 442, 304 P 2d 606, overruled on other grounds, 134 M 519, 525, 333 P 2d 1017.

Evidence of Intent

Under former section 94-118, finding of jury that defendant was able to form specific intent to commit first-degree assault as required by statute was properly inferred from evidence that, although intoxicated, defendant turned off lights inside apartment, reached into a nearby drawer and prepared revolver for action, surrendered to police, walked out of apartment under own power with hands in air and after arrest had no difficulty recounting recent events to police. *State v. Lukus*, 149 M 45, 423 P 2d 49.

Fraudulent Intent

Under former section 94-118, proof of intent to defraud could consist of reasonable inferences drawn from affirmatively established facts; where defendant was sufficiently conscious at the time of the utterance of check to recognize its fraudulent nature he was of adequate mental ability to form an intent to de-

fraud. *State v. Cooper*, 146 M 336, 406 P 2d 691.

Insanity Affecting Intent

Under former section 94-117 insanity was defined as any weakness or defect of the mind rendering it incapable of entertaining in the particular instance the criminal intent; criminal responsibility was to be determined solely by defendant's capacity to conceive and entertain the intent to commit the particular crime. *State v. Keerl*, 29 M 508, 75 P 362.

Instructions to Jury

An instruction embodying the provisions of former sections 94-117 and 94-118 regarding the necessity of the presence of joint operation of act and intent to constitute a crime, should have been given in every criminal prosecution, especially when requested by defendant. *State v. Allen*, 34 M 403, 87 P 117.

Under former section 94-117, an instruction charging jury that when an unlawful act is shown to have been deliberately committed for the purpose of injuring another it is presumed to have been committed with a malicious and guilty intent, and that the law presumes that a person intends the ordinary consequences of any voluntary act committed by him, may mislead the jury, and should not have been given in prosecution for assault in the first degree, a critical element of which is the intent with which the act is committed. *State v. Schaefer*, 35 M 217, 88 P 792.

Under former section 94-117, refusal to instruct that in every crime there must exist union or joint operation of act and intent or criminal negligence as provided by statute was not error in prosecution for second degree assault under which general nonstatutory intent to do harm willfully, wrongfully and unlawfully is an element, but under which specific statutory intent to do any particular kind of degree of injury to victim is not an element. *State v. Fitzpatrick*, 149 M 400, 427 P 2d 300.

Since under former section 94-117, specific intent was not a necessary element of second degree assault, refusal of instruction thereon was proper even though defendant claimed that high degree of intoxication precluded formation of intent. *State v. Warrick*, 152 M 94, 446 P 2d 916.

Involuntary Manslaughter

Willful or evil intent was not an element of involuntary manslaughter under

former section 94-117. *State v. Pankow*, 134 M 519, 333 P 2d 1017.

Manifestation of Intent

Evidence that defendant accosted a nine-year-old girl to whom he was a total stranger on the street, invited her to his room to play with him, on arriving there locked the door, asked her to remove her dress and then placed his hand upon her shoulder in an attempt to remove her dress, was sufficient to warrant a jury finding that the defendant intended to arouse his sexual desires in a depraved manner. *State v. Kocher*, 112 M 511, 119 P 2d 35.

Presumption of Intent

Under former section 94-117, intent was conclusively presumed from the commission of a statutory offense, as for collecting illegal fees, and where the statutes were not ambiguous, it was no defense that defendant acted on the advice of the attorney general. *State ex rel. Rowe v. District Court*, 44 M 318, 119 P 1103.

94-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in 94-2-101 (28), 94-2-101 (32) and 94-2-101 (53) only if the offense is punishable by a fine not exceeding five hundred dollars (\$500), and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

History: En. 94-2-104 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 4-9.

Commission Comment

This section is intended to establish strict limitations upon the elimination of a mental state as an element of an offense. Most states have numerous statutes which impose upon the courts the responsibility of determining, as to each such provision, either that mental state is or is not an element, or (particularly in the more serious offenses) that the legislature intended that a particular mental state be implied. (See the careful study of the Wisconsin statutes by Remington, "Liability Without Fault Criminal Statutes," 1956 Wis. L. Rev. 625.) Many such provisions are found in legislation of a regulatory nature, involving the sale of specified kinds of property to designated classes of persons or to the public, the commission of nuisances, the violation of laws concerning motor vehicles, health and safety, and fish and game laws.

In the old code numerous statutes failed to specify the mental state required and no adequate rule existed for determining whether a particular provision, not interpreted by the court was to be regarded

as implying a particular mental state or as imposing absolute liability. (The usual methods of interpretation are summarized in Remington, "Liability Without Fault Criminal Statutes," 1956 Wis. L. Rev. 625 at 629 to 632.)

Section 94-2-104 represents only a partial solution of the problem—a restrictive rule of interpretation. Another part of the solution is in the rephrasing of code provisions which define specific offenses, to indicate clearly the intended mental state and the offenses in which mental state, for some cogent policy reason, is not an element.

Absolute liability is authorized for those offenses in which incarceration is not part of the penalty, and the fine is less than five hundred dollars (\$500.00). Many of the old Montana code provisions which do not require proof of specified mental state are in this category, as are many of the penal provisions appearing outside of the Criminal Code. The difficulty of enforcing such provisions if a mental state must be proved may justify the conclusion that the omission of a mental state requirement is intended to create absolute liability. (See Model Penal Code, Draft No. 4, comment on § 2.05 at page 145; Sayre, "Public Welfare Offenses," 33 Colum. L. Rev. 55 at 68 to 72, 78 and 79 (1933)).

In addition to restricting absolute liability to offenses not punishable by incarceration or by a fine of more than five hundred dollars (\$500.00), this section provides that only a clearly indicated legislative purpose to create absolute liability should be recognized, and in all other instances, a mental state requirement

should be implied as an application of the general rule that an offense consists of an act accompanied by a culpable mental state, as provided in section 94-2-103(1), (2) and (3). (See Model Penal Code, Draft No. 4, comment on ¶ 2.05 at pages 145 and 146; Sayre, *supra*, at pages 68 to 72 and 79 to 83).

94-2-105. Causal relationship between conduct and result. (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and
(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense, and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected, or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense, and the result is not within the risk of which the offender is aware, or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected, or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

History: En. 94-2-105 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 2.03.

Commission Comment

This section is concerned with offenses that are so defined that causing a particular result is a material element of the offense. Subsection (1) (a) treats cause-in-fact as the causal relationship normally regarded as sufficient to create culpability. When concepts of "proximate cause" disassociate the offender's conduct and the result which was cause-in-fact, the reason for limiting culpability is the conclusion that the actor's culpability with reference to the result, i.e., his purpose, knowledge, or negligence, was such that it would be unjust to permit the result to influence his liability or the gravity of the offense. Problems of this kind should be faced as problems of the culpability required for

conviction and not as problems of causation.

Subsection (1) (b) contemplates that the general rule of (1) (a) may be unacceptable when dealing with particular offenses. In this event additional causal requirements may be imposed explicitly. Subsections (2) and (3) are drafted on the theory that there is a need to systematize rules that have developed when there is a variance between the actual result and the result sought, contemplated or probable under the circumstances. These subsections assume that liability requires purpose, knowledge or negligence with respect to the result which is an element of the offense. Subsections (2) (b) and (3) (b) make no attempt to catalogue possibilities like intervening or concurrent causes, etc. They set out an ultimate criterion, whether the result was too accidental to have a bearing on the actor's liability or the gravity of the offense. Since

the actor has sought a criminal result or has been negligent with respect to that result, he will be guilty of some offense even if he is not held for the actual result. There is an advantage to permit the jury to face the issue squarely with their own sense of justice, e.g., where the defendant shoots his wife and in the hospital she contracts a disease and dies. Her death

may be thought to have been rendered substantially more probable by the defendant's conduct yet a jury could regard it as too remote to convict the defendant of murder. It should be noted that the maximum potential punishment for attempt is the same as for the underlying offense, thus placing greater emphasis on purpose than result. See section 94-4-103.

DECISIONS UNDER FORMER LAW

Instructions to Jury

An instruction charging the jury that when an unlawful act is shown to have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent, and that the law presumes that a person intends the ordinary

consequences of any voluntary act committed by him, may mislead the jury, and should not be given in a prosecution for assault in the first degree, a critical element of which was intent with which the act was committed. *State v. Schaefer*, 35 M 217, 221, 88 P 792.

94-2-106. Accountability for conduct of another. A person is responsible for conduct which is an element of an offense, if the conduct is either that of the person himself, or that of another and he is legally accountable for such conduct as provided in section 94-2-107, or both.

History: En. 94-2-106 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 5-1.

Commission Comment

This section states the general principle that criminal liability is based on conduct and that the conduct may be that of another person.

94-2-107. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense, and with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following: wholly deprives his prior efforts of effectiveness in such commission, or gives timely warning to the proper law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense.

History: En. 94-2-107 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 5-2.

Commission Comment

This section is a statement of principles of accessoryship although that term is not employed in the code. It provides a much

fuller statement of applicable law in this important field and, in some respects, alters and modifies the old law.

The former statutory provisions R. C. M. 1947, sections 94-6423 and 94-6425 had as their primary purpose the elimination of the elaborate common-law distinctions between principals in the first degree, principals in the second degree, and the accessories before the fact. Section 94-2-107

accepts the approach of the existing law and endeavors to develop it in full and systematic fashion.

Subsection (2) makes clear a person may be held legally accountable in circumstances not otherwise included in section 94-2-107, where the particular statute so provides. In such case the particular provision prevails. An example of such a statute might be one imposing vicarious criminal liability on a tavern owner for the act of an employee resulting in sale of liquor to a minor.

Subsection (3) is a comprehensive statement of liability based on counseling, aiding and abetting which includes those situations that, at common law, involve the liability of principals in the second degree and accessories before the fact. Liability under this subsection requires proof of a "purpose to promote or facilitate . . . commission of the substantive offense." Moreover, "conspiracy" between the actor and defendant is not of itself made the basis of accountability for the actor's conduct, although the acts of conspiring may in many cases satisfy the particular requirements of this subsection. (See, e.g., *Pinkerton v. United States*, 328 US 640, 90 L Ed 1489, 66 S Ct 1180 (1946), Commentary, A.L.I., Model Penal Code Tent. Draft No. 1, 1953, 20-26.)

Subsection (3)(a) states that the person who is a "victim" of the criminal act does not, unless the particular statute so states, share the guilt of the actor. This is true even though the person is a "willing" victim and counseled commission of the crime. Thus, the victim of a blackmail plot who pays over money, even though he "aids" the commission of the crime, or the girl under age of consent in statutory rape, even though she solicited the criminal act, are not deemed guilty of the substantive offense. Subsection (3)(a) does not prevent the extension of criminal liability to the victim if the particular statute so

provides. Thus, if it be decided that a bribe-taker should be treated as guilty of bribery, this can be provided in the bribery section. All that is done in these provisions is to state the rule that persons falling under subsection (3)(a) are not guilty if there is no specific provision to the contrary.

Subsection (3)(b) poses the question: What can a person do who has aided and abetted in a criminal plot, to relieve himself of liability for the substantive crime? It appears desirable to provide some escape route, if for no other reason than to provide an inducement for disclosure of crimes before they occur. The problem here should be distinguished from the question in the law of conspiracy as to what actions are required for a person to disassociate himself from a conspiratorial agreement.

To obtain release from criminal liability the person must terminate his affirmative efforts to facilitate commission of the crime. In addition, he may be relieved if he is able wholly to deprive his contributions to the commission of an offense of their effectiveness. If a timely warning is given the police, the person should be relieved even if through negligence or act of God the police fail to prevent the crime. Finally, a general clause "otherwise makes proper effort to prevent the commission of the offense" is included. This will require interpretation according to the facts of the individual case.

This section should not conflict with the substance of Montana case law that the knowledge that a crime is about to be committed does not make the accused an accomplice (*State v. Mercer*, 114 M 142, 152, 133 P 2d 358) and that one who knows a felony has been committed, but does nothing to conceal it or harbor or protect the offender, is not an accessory to the commission of that felony (*State v. McComas*, 85 M 428, 433, 278 P 993).

DECISIONS UNDER FORMER LAW

Constitutionality

Former section 94-6423 which abrogated the distinction between an accessory before the fact and the principal did not violate constitutional provision guaranteeing to an accused the right to demand the nature and cause of the accusation. *State v. Geddes*, 22 M 68, 87, 55 P 919.

Aiding and Abetting

One of a band of Indians hunting together who was present and saw another member of the band shoot a shepherd to prevent his reporting the killing of a cow by the Indians was an accomplice to the crime, so that his statement implicating defendant was insufficient unless corroborated. *State v. Spotted Hawk*, 22 M 33, 55 P 1026.

The object of the former section 94-6423 was to put the principal and the agent upon the same legal ground, and to authorize the principal to be charged as if he himself had committed the felony which was in fact perpetrated by his agent upon advice and encouragement of the principal. *State v. Geddes*, 22 M 68, 88, 55 P 919.

Under former section 94-6423, the distinction between accessories before the fact and principals was abrogated and all were treated as principals. *State v. De Wolfe*, 29 M 415, 423, 74 P 1084, overruled on other grounds in *State v. Penna*, 35 M 535, 546, 90 P 787.

Where defendants charged with assault in the first degree showed by their own testimony that they went to the home of the victim to ascertain whether he had

made a certain derogatory statement, one of them struck him for denying having made the statement and the other assaulted him for making the statement, each defendant was an accessory to the other and a principal in the carrying out of a common design. *State v. Maggert*, 64 M 331, 337, 209 P 989.

Defendants who, during the owner's absence, were in charge of a place where liquor was unlawfully sold could be found guilty as principals of maintaining a common nuisance. *State v. Peters*, 72 M 12, 231 P 392.

Defendant who referred and accompanied thieves to another who bought stolen cattle could be found guilty as a principal of receiving stolen property. *State v. Huffman*, 89 M 194, 296 P 789.

Where a verbal declaration of one codefendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration was insufficient to establish a partnership. Although existence of partnership was immaterial due to former sections 94-6423 and 94-204, the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. *State v. Keller*, 126 M 142, 246 P 2d 817, 821.

Under former sections 94-6423 and 94-204, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. *State v. Simon*, 126 M 218, 247 P 2d 481, 485.

Under former section 94-6423, a showing that the defendant aided or abetted in the taking of property from the person of another was sufficient to establish defendant's guilt of larceny. *State v. Maciel*, 130 M 569, 305 P 2d 335, 336.

Bartender who served drinks after hours and called prostitutes when customers arrived was in *pari delicto* and could not recover from his employer for injuries received in the course of that employment. *Lencioni v. Long*, 139 M 135, 361 P 2d 455.

Prison inmate who received custody of a guard from another inmate, then confined the guard against his will, could be found guilty of kidnaping as a principal even though the guard was originally seized by another and there was insufficient evidence of a preconceived plan of action. *State v. Frodsham*, 139 M 222, 362 P 2d 413.

Although circumstantial evidence was not sufficient to place defendant on the actual premises where the burglary occurred, it was sufficient to prove that defendant aided and abetted in the commission of the crime. In *re McMaster*, — M —, 529 P 2d 1391.

Entrapment

Where a stock detective solicited one to assist him in the larceny of cattle for the purpose of convicting another of the crime, and the person so solicited on arrival at the scene of the intended taking declined to participate, he was not a principal to the crime, and hence, the one upon whom the crime was sought to be fastened, could not, under former section 94-6423, have become his accessory. *State v. Neely*, 90 M 199, 211, 300 P 561, distinguished in 138 M 123, 126, 354 P 2d 1105.

Husband and Wife

Acquiescence by wife and her failure to protest when her husband unlawfully sold whiskey in her presence in their home were not enough to make her guilty as a principal under former section 94-204. *State v. Cornish*, 73 M 205, 235 P 702.

Instructions to Jury

In a prosecution for arson, where there was some testimony that defendant procured another to set the fire, instructions embodying the provisions of former sections 94-6423 and 94-204, were proper; court properly refused instructions directing the jury to find for the defendant unless satisfied beyond a reasonable doubt that he was present personally and set the fire himself. *State v. Chevigny*, 48 M 382, 385, 138 P 257.

Instructions substantially in the words of former sections 94-6423 and 94-204, defining a principal and telling the jury that the distinction between a principal and an accessory had been abrogated by statute, were not improper as implying that a felony had been committed. *State v. Wiley*, 53 M 383, 387, 164 P 84.

An instruction defining "principals" as all persons who "aid or abet" in the commission of an offense, instead of "aid and abet" as used in former section 94-204, was incorrect. *State v. McClain*, 76 M 351, 246 P 956.

Where the state proceeded on the theory that defendant was present and directly committed the crime of horse stealing, not on the theory that he was not present but aided and abetted another, an instruction in the language of former section 94-204, defining principals to include those not present but aiding and abetting another, was not reversible error, though not proper on retrial. *State v. Hamilton*, 87 M 353, 363, 287 P 933.

The use of the disjunctive "or" in an instruction in a criminal case defining who are principals, saying that one who aids "or" abets another in the commission of an offense is a principal, instead of aids "and" abets, the conjunctive used in former section 94-204, was error. *State v. Ludwick*, 90 M 41, 300 P 558.

Knowledge

Mere presence at the commission of a crime does not render one an accomplice unless under the circumstances he had a duty to interfere. *State v. McComas*, 85 M 428, 278 P 993.

Under former section 94-6423, the mere knowledge in a person that a crime was about to be committed did not constitute him an accomplice; nor did the fact that one charged with receiving stolen property, on prior occasions may have purchased such property seem sufficient to make the receiver an accomplice in the particular theft nor even to give him the knowledge that it was to be committed. *State v. Mercer*, 114 M 142, 149, 133 P 2d 358.

Receiver of Stolen Property

Defendant who became an accomplice to the theft of a calf by encouraging and advising the thief became a principal to the crime under former section 94-6423 and was a constructive possessor of the stolen calf by virtue of the thief's actual possession; theory that constructive possessor could not "receive" same property from actual possessor did not preclude state from prosecuting accessory for being a receiver of stolen property upon his subse-

quent acquisition of actual possession of the calf. *State v. Webber*, 112 M 284, 116 P 2d 679, 136 ALR 1077.

Sufficiency of Pleadings

Under former section 94-6423 an information containing a single count charging the crime of second degree assault, as defined in former section 94-602, was proper where only one crime was involved, namely, second degree assault, with at least two different theories upon which to base a conviction, one by a direct assault and the other by aiding and abetting. *State v. Zadick*, 148 M 296, 419 P 2d 749, 751.

Sufficiency of Proof

An indictment for murder, charging defendant as principal, was sustained by proof that he was guilty of advising and encouraging the crime. *State v. Geddes*, 22 M 68, 86, 55 P 919.

Under an information charging receipt of stolen property by one who became a principal by aiding and abetting another in receiving it, there was no fatal variance between the crime as alleged and the proof, showing him to have taken part only as an accessory. *State v. Huffman*, 89 M 194, 203, 296 P 789.

94-2-108. Separate conviction of person accountable. A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable, although the other person claimed to have committed the offense has not been prosecuted or convicted, or has been convicted of a different offense or is not amenable to justice, or has been acquitted.

History: En. 94-2-108 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 5-3.

Commission Comment

Even at common law two persons, both principals in the first degree, could be

tried separately and although one was acquitted, the state was not precluded from proceeding to trial and obtaining a conviction against the second. The same result is possible under this code but the classification of principals and accessories is eliminated.

94-2-109. Responsibility. A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

History: En. 94-2-109 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 53, Ch. 329, L. 1974.

Source: Derived from Revised Codes of Montana 1947, sections 94-201(1) and 94-119; Illinois Criminal Code, Chapter 38, section 6-3.

Commission Comment

Chapter 5 of Title 95, Competency of the Accused, completes the coverage of this section.

Subsection (2) is taken from Illinois Criminal Code, Chapter 38, section 6-3. This

imposes a stricter limitation than the old code section 94-119(1). Instead of involuntary intoxication being a defense it is necessary for the accused to also prove that he was thereby made mentally incompetent. The second sentence of paragraph (2) makes it clear that intoxication is no defense but is merely a fact which the jury can consider in determining the existence of a particular mental state. When intoxication has proceeded so far as to render the accused incapable of forming the particular mens rea required for the offense, the defendant is entitled to be acquitted on that charge.

Amendments

The 1974 amendment deleted former

subsection (1) which read: "No person is capable of committing any offense unless he has attained his sixteenth birthday at the time the act in question was committed. Any person who has not yet attained his eighteenth birthday shall be subject to the law as provided in Title 10, chapter 6, R. C. M. 1947"; and deleted subsection designation (2).

Repealing Clause

Section 54 of Ch. 329, Laws 1974 read: "Sections 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630 and 10-633 are repealed."

DECISIONS UNDER FORMER LAW

Confession While Intoxicated

Under former section 94-119, confession of intoxicated defendant was voluntary and admissible in light of evidence that he was able to recite in great detail events occurring prior to and during act charged. *State v. Chappel*, 149 M 114, 423 P 2d 47.

Insanity

Evidence that defendant's reason had been clouded by intoxication during the earlier hours of the day on which the homicide was committed, and that he suffered from periodic heart attacks, did not warrant an instruction upon the question of his sanity. *State v. Kuum*, 55 M 436, 178 P 288.

Malice and Intoxication

Under former section 94-119, in prosecution for felony murder, ample evidence presented to jury to justify conclusion that defendant, although intoxicated, was able to entertain intent to commit the robbery during which homicide occurred, precluded review on appeal of the question of defendant's state of intoxication and his ability to entertain intent to commit the robbery. *State v. Reagin*, 64 M 481, 210 P 86.

Under former section 94-119, intoxication was not an absolute defense; if however defendant could show that the state of his intoxication was such that he was incapable of forming a malicious intent, the charge would be mitigated to a lesser offense which did not include intent as an element. Where defendant, on the day previous to an assault, told the prosecuting witness that he was going to get a gun and kill him relative to a matter occurring a year previously, and on the day of the assault, referring to it again, viciously assaulted the victim, thus showing his capacity to harbor malice, his alleged intoxication was no defense. *State v. Laughlin*, 105 M 490, 73 P 2d 718.

Where defendant was intoxicated to such an extent as to render him incapable of entertaining the purpose, intent or malice requisite for first-degree murder, the crime was properly reduced to murder in second degree. *State v. Palen*, 119 M 600, 178 P 2d 862, explained in 150 M 399, 407, 436 P 2d 91.

Under former section 94-119, in murder prosecution, jury was properly instructed that if killing was done by defendant with malice aforethought, but defendant was incapable of premeditation and deliberation because of intoxication, the crime was second-degree murder, and that if defendant was so intoxicated at the time of killing that he was incapable of harboring malice aforethought, crime was manslaughter. *State v. Brooks*, 150 M 399, 436 P 2d 91.

Specific Intent

Since specific intent was not element of second-degree assault, the court was correct in refusing defendant's offered instruction that jury could take degree of intoxication into account in arriving at verdict in so far as it affected defendant's capacity for willfulness and intent under former section 94-119. *State v. Warrick*, 152 M 94, 446 P 2d 916.

Testimony of two witnesses that defendant was under the influence of alcohol was not sufficient to refute finding by jury that defendant was not so intoxicated as to be unable to form the requisite intent to commit larceny. *State v. Austad*, — M —, 533 P 2d 1069.

Voluntary Intoxication

Although as a general rule, courts do not approve the giving of abstract propositions of law as instructions to juries, where the sole defense of one charged with an attempt to commit rape was intoxication, the trial court did not err in giving an instruction on voluntary intoxication in

the words of subdivision 1 of former section 94-119. *State v. Stevens*, 104 M 189, 65 P 2d 212, overruled on other grounds in *State v. Bosh*, 125 M 566, 242 P 2d 477.

While voluntary intoxication was gen-

erally no defense to a criminal charge under former section 94-119, it was available as a defense where a specific intent was an essential element of the crime charged. *Alden v. State*, 234 F Supp 661, affirmed in 345 F 2d 530.

94-2-110. Substitutes for negligence and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

History: En. 94-2-110 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section is intended to obviate any

possible misunderstanding as to what mental state will satisfy the requirements of each statutory provision. Proof of the higher or more specific mental state will satisfy any lesser mental state that may be required by a particular statute.

94-2-111. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(b) by reason of youth, mental disease or defect or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) it is induced by force, duress or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

History: En. 94-2-111 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

Victim consent may eliminate criminal responsibility. However, not every consent

is legally valid. The state has an obligation to protect the young and the helpless from their own incapacities. For reasons of public policy, the state may prohibit some conduct absolutely irrespective of anyone's consent.

94-2-112. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor, and is defined by sections 94-6-307, 94-6-308, 94-6-311, 94-6-312, 94-6-313, 94-8-108, 94-8-109, 94-8-111, 94-8-112, 94-8-113 of this code, or is defined by another statute which clearly indicates a legislative purpose to impose liability on a corporation; and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute, concerning the corporation's accountability for certain agents or under certain circumstances, is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed, by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof, that the high managerial agent having

supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense, is a defense to a prosecution for any offense to which subsection (1) (a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "Agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation.

(b) "High managerial agent" means an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

History: En. 94-2-112 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 5-4.

Commission Comment

Section 94-2-112 deals with the criminal responsibility of private corporate bodies.

Subsection (1)(a) deals with the corporate liability for misdemeanor offenses, such other offenses as may be expressly included, and those which clearly indicate a legislative purpose to impose corporate liability where the offense is defined by a statute not included in the Criminal Code. In dealing with regulatory offenses, the broadest scope of liability is provided. The corporation is made criminally responsible for criminal conduct performed by any corporate employee acting within the scope of his office or employment and in behalf of the corporation. The chief justification for such broad liability in this class of cases is to provide an inducement for high managerial officers in the corporation to supervise the behavior of minor employees in such a way as to avoid criminal conduct on the part of corporate employees. In many of the regulatory offenses, the corporation which violates a criminal statute is not confronted by the threat of tort liability growing out of the same act. Thus, if the corporation is required to file a corporate report and fails to do so, the liability it will suffer may be criminal only. These provisions do not relieve the individual corporate employee from criminal liability for his own act. In many cases, criminal prosecution of the individual will prove more effective in enforcing the regulatory policy of the statute. There may be times, however, in which, while it is clear that someone in the corporate employ has committed the criminal act, it is impossible to identify the particular employee guilty of criminal behavior. In such case, the only sanction available is the imposition of a fine on the

corporate body. There may also be cases in which the criminal act is committed by a corporate employee of a foreign corporation residing outside the jurisdiction. In such a case the only feasible course open to the Montana prosecutor would be a criminal action against the corporation.

Since, however, the major purpose of subsection (1)(a) is to encourage diligence on the part of managerial personnel to prevent criminal conduct on the part of corporate employees, it seems appropriate to permit the corporation to defend by proof that the criminal conduct occurred despite the exercise of due diligence on the part of supervisory personnel. Consequently, subsection (2) provides that proof of due diligence is a defense to the criminal charge against the corporation. The burden of proof in this case, is placed upon the corporate defendant. This defense is further qualified by the provision that if the statute in question clearly intends that the defense of due diligence should not be available to the corporation, the particular provision of the statute shall prevail over the language of subsection (2).

Subsection (1)(b) relates to the scope of liability of corporations for criminal offenses of a more serious character. It provides that when a corporation is indicted for a felony such as embezzlement, or involuntary manslaughter, the corporation may not be held liable unless the criminal conduct was performed or participated in by the board of directors or by a high managerial agent. The restriction on the scope of corporate liability in this class of cases is justified by the consideration that before the stigma of serious criminality attaches to a corporate body, the conduct should involve someone close to the center of corporate power. Moreover, in these cases, the argument for the necessity of corporate fines to stimulate diligent supervision of minor employees is considerably less persuasive. This is true because most of the serious felonies also involve the possibility of

corporate tort liability and this possibility should provide sufficient inducement for the exercise of proper supervision by managerial officials. The restriction of corporate liability in the case of serious felonies to acts of participating high managerial officials is supported by the case law of some American states and appears to be consistent with the English law on the same point. (E.g., *People v. Canadian Fur Trappers Corp.*, 248 NY 159, 161 NE 455, 59 ALR 372 (1928); *Rex v. I.C.R. Haul-*

age Ltd. (1944) 1 K.B. 551; Welsh, "The Criminal Liability of Corporations," 62 L. Q. Rev. 345 (1946).) The definitions of "agent" and "high-managerial agent" defy precise definition because of the infinite variations in the organizational schemes of corporate bodies. The definition here provided, however, is probably more precise than that which has emerged from the case law. (See especially, *People v. Canadian Fur Trappers Corp.*, 248 NY 159, 161 NE 455, 59 ALR 372 (1928).)

94-2-113. Accountability for conduct of corporation. (1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed, to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense, although only a lesser or different punishment is authorized for the corporation.

History: En. 94-2-113 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 5-5.

Commission Comment

Section 94-2-113 should make clear that an individual acting for a corporation is fully responsible for his own criminal acts and is punishable accordingly.

CHAPTER 3

JUSTIFIABLE USE OF FORCE—EXONERATION

Section 94-3-101. Definitions.

- 94-3-102. Use of force in defense of person.
- 94-3-103. Use of force in defense of occupied structure.
- 94-3-104. Use of force in defense of other property.
- 94-3-105. Use of force by aggressor.
- 94-3-106. Use of force to prevent escape.
- 94-3-107. Use of force by parent.
- 94-3-108. Use of force in resisting arrest.
- 94-3-109. Execution of death sentence.
- 94-3-110. Compulsion.
- 94-3-111. Entrapment.
- 94-3-112. Affirmative defense.

94-3-101. Definitions. (1) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(2) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

- (a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and
- (b) the firing of a firearm at a vehicle in which a person is riding.

History: En. 94-3-101 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 7-8.

Commission Comment

This section is intended to make clear the status of the practice of firing in the direction of any person. In some circum-

stances a peace officer may be authorized to use deadly force. While firing into the air without endangering an offender's safety is permissible, firing so close to him that his safety is endangered is the use of deadly force, which can be justified only in the circumstances in which the officer is

authorized to use deadly force. (See Perkins, "The Law of Arrest," 25 Iowa L. Rev. 201 at 270, 288, 289 (1940); Note, "Use of Deadly Force in Preventing Escape of Fleeing Minor Felon," 34 N.C. L. Rev. 122 (1955).)

94-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another, or to prevent the commission of a forcible felony.

History: En. 94-3-102 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 7-1.

Commission Comment

The law of self-defense has been interpreted in a large number of judicial decisions, agreeing in principle though differing somewhat in defining the borderlines such as the minimum situation in which the use of deadly force may be authorized. (The history of self-defense is traced in Perkins, "Self-Defense Re-examined," 1 U.C.L.A. L. Rev. 133 at 137 to 142 (1954).) This section presents the general rule as to defense of person contemplating the simplest and probably most common situation—that in which a person who has done nothing to provoke the use of force against himself is confronted immediately with unlawful force under such circumstances that he believes that he must use force to defend himself, and his belief is reasonable. This statement contains several propositions:

(1) The person must not be the aggressor (the situation considered in section 94-3-105);

(2) The danger of harm must be a present one, not merely threatened at a future time, or without the present ability of carrying out the threat;

(3) The force threatened must be unlawful—either criminal or tortious;

(4) A person must actually believe that the danger exists, that his use of force is necessary to avert the danger, and that the kind and amount of force which he uses is necessary; and

(5) His belief, in each of the aspects described, is reasonable even if it is mistaken. The privilege extends to the protection not only of the person using the force, but of other individuals unlawfully

threatened with harm; and in determining whether the use of force is necessary, a person need not consider whether the danger might be avoided if he were to give up some legal right or privilege. If a person under these circumstances uses only non-deadly force for protection, no further legal restriction should be necessary. (See Perkins, *supra*, at pages 133 to 137.)

The privilege of using force likely to cause death or serious bodily harm (often called deadly force) is limited to cases in which the force imminently threatened apparently will cause death or serious bodily harm, or in which a violent offense is being committed which in its nature involves serious risk of serious bodily harm, such as rape, robbery, burglary, arson, or kidnapping.

This section codifies prior Montana law in which the section is intended to test the right of self-defense as measured by what a reasonable person would have done under like or the same circumstances. (State v. Houk, 34 M 418, 423, 87 P 175.) A person attacked can act upon appearances and might justifiably kill his attacker, though not in actual peril if the circumstances are such that a reasonable man would be justified in acting the same way. Further, a person attacked with apparent murderous intent need not retreat and seek a place of safety before using deadly force on his attacker. (State v. Merk, 53 M 454, 460, 164 P 655.) However, whether the circumstances attending a homicide claimed to have been committed in self-defense, are such as to justify a defendant's fears, as a reasonable person, in the belief that he was in imminent danger of losing his life or suffering serious bodily harm at the hands of the deceased, is a question of fact for the jury; bare fear of an assault does not justify the killing. (State v. Harkins, 85 M 585, 602, 281 P 551.)

DECISIONS UNDER FORMER LAW

Defense of Others

The provisions of former section 94-2513 put persons acting in defense of others upon the same plane as those acting in defense of themselves. Every fact, therefore, which would be competent to establish justification in the one case would, for the same reasons, be competent to establish it in the other. *State v. Felker*, 27 M 451, 458, 71 P 668.

Excessive Force

Defendant who fired bullet through apartment door striking investigating police officer, who was privileged to open apartment door to limit of night latch and who announced that he was policeman, used excessive force and was properly convicted of first degree assault. *State v. Lukus*, 149 M 45, 423 P 2d 49.

Instructions to Jury

Court properly refused defendant's instruction relative to self-defense where there was no evidence whatever that defendant acted under reasonable apprehension of death or great bodily harm and where witnesses for state gave no indication that defendant acted in fear nor did defendant himself claim that he acted under any fear of harm. *State v. Brooks*, 150 M 399, 436 P 2d 91.

Instruction on self-defense was not required in the absence of evidence of apprehension of harm to herself by defendant but where all of defendant's evidence tended to establish accident or justifiable homicide as defense. *State v. Eisenman*, 155 M 370, 472 P 2d 857.

Prior Acts or Threats

Testimony as to prior threats by deceased, though not communicated to defendant, was admissible to characterize decedent's conduct. *State v. Shadwell*, 26 M 52, 66 P 508; *State v. Felker*, 27 M 451, 71 P 668, distinguished in 109 M 303, 313, 97 P 2d 330; *State v. Whitworth*, 47 M 424, 133 P 364, distinguished in 109 M 303, 313, 97 P 2d 330.

It was reversible error to instruct the jury to disregard prior threats by decedent unless the accused, at the time of the killing, was actually assailed, or believed he was in great bodily danger. *State v. Shadwell*, 26 M 52, 66 P 508.

On issue whether defendant, when he killed deceased, believed that deceased was about to assault his wife—defendant's sister—testimony showing that, to defendant's knowledge, deceased had made prior assaults on his wife, was admissible, and the fact that the prior assaults occurred more than two weeks before did

not make evidence inadmissible as too remote. *State v. Felker*, 27 M 451, 71 P 668, distinguished in 88 M 21, 28, 289 P 1037.

Testimony as to prior acts of violence and threats by deceased communicated to defendants is admissible as to the defendant's state of mind when coupled with evidence of some overt act by the deceased. *State v. Hanlon*, 38 M 557, 100 P 1035, distinguished in 109 M 303, 313, 97 P 2d 330.

Fact that decedent had to defendant's knowledge inflicted serious injury to another man about a year before was admissible on question of defendant's apprehension of danger to himself, and refusal to admit such evidence was reversible error. *State v. Jennings*, 96 M 80, 28 P 2d 448.

Reasonable Fear

Under former section 94-2514, in a prosecution for murder, where the defendant relied upon the plea of self-defense, an instruction which made the measure of justification "that sense of danger appearing to the defendant, and to men or individuals of his race, standing, individuality, and intelligence," was properly refused where another instruction covered the reasonable man standard on self-defense. *State v. Cadotte*, 17 M 315, 320, 42 P 857.

An instruction in a prosecution for murder that the right of self-defense was to be measured by what a reasonable person would have done under like or the same circumstances, conformed to the requirements of former section 94-2513, and was sufficient to state the right of self-defense. *State v. Houk*, 34 M 418, 423, 87 P 175.

Under former section 94-2513, a person assailed could act upon appearances as they presented themselves to him, meet force with force, and even slay his assailant; and, though in fact he was not in any actual peril, yet if the circumstances were such that a reasonable man would be justified in acting as he did, the slayer will be held blameless. *State v. Merk*, 53 M 454, 460, 164 P 655.

Under former section 94-2514, whether the circumstances attending the homicide claimed by defendant to have been committed in self-defense, were such as to justify his fears, as a reasonable person, in the belief that he was in imminent danger of losing his life or suffering great bodily harm at the hands of deceased, was a question of fact for the jury; bare fear on his part of an assault by the latter, of a quarrelsome and violent disposition, was not alone insufficient to justify the killing. *State v. Harkins*, 85 M 585, 281 P 551.

Under former section 94-2514, where self-defense was pleaded to a charge of

homicide, the question whether the circumstances were such as to justify defendant's fears, as a reasonable person, in the belief that he was in imminent danger of losing his life or suffering great bodily harm at the hands of deceased, was for the jury. *State v. Fine*, 90 M 311, 316, 2 P 2d 1016.

A person has the right to defend himself against what he reasonably believes to be a threat of death or great bodily harm even though the danger is not real, and the failure to make this distinction in a self-defense instruction in an assault prosecution is reversible error. *State v. Daw*, 99 M 232, 43 P 2d 240.

Under former section 94-605, where the evidence in a prosecution for assault warrants the giving of instructions on self-defense relating to the rights of defendant in resisting an attack by three or more persons committing a tumultuous trespass, the court should have pointed out to the jury the essential differences between an assault by such a body of men and that by an individual. *State v. Daw*, 99 M 232, 43 P 2d 240.

94-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

History: En. 94-3-103 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 7-2.

Commission Comment

This aspect of justification seems to be rather well-settled: a person may prevent or repel with force another's unlawful entry into a dwelling, whether the dwell-

Reputation of Decedent

Evidence of reputation of decedent for turbulence and violence was admissible, even though unknown to defendant, where there was a question as to which party was the aggressor. *State v. Jones*, 48 M 505 139 P 441, distinguished in 109 M 303, 313 97 P 2d 330.

Retreat by Defendant

A person assailed with apparent murderous intent need not retreat and seek a place of safety before slaying his assailant. *State v. Merk*, 53 M 454, 460, 164 P 655.

Unarmed Assailant

Under former section 94-2513, where defendant pleading self-defense to a charge of murder was a much smaller and weaker man than deceased, the fact that after the first blow the latter lost his weapon did not deprive defendant of his right to claim self-defense in thereafter retaliating with a knife, since in view of the disparity in physique he could reasonably apprehend great bodily harm to himself even though his assailant was unarmed. *State v. Jennings*, 96 M 80, 88, 28 P 2d 448.

ing is occupied by the person using such force or by someone else, and whether the trespasser uses force or enters without force; but the use of deadly force is limited to instances of violent or forcible felonies and violent entries with apparent threat of personal violence to someone in the occupied structure. The reasonable-belief and no-retreat principles apply.

DECISIONS UNDER FORMER LAW

Excessive Force

Defendant who fired bullets through apartment door striking investigating police officer was properly convicted of first-degree assault for use of excessive force where the police officer was privi-

leged to open the apartment door to the limit of the night latch and where he announced that he was a policeman prior to the firing of the shot. *State v. Lukus*, 149 M 45, 423 P 2d 49.

Justifiable Force

Defendant was justified in pointing a loaded revolver at an unknown person entering his home after he had forcibly evicted an unauthorized occupant and had had timber stolen, and the fact that defendant surrendered his weapon after identifying the person entering indicated that he had no intention to fire except in defense of his home. *State v. Nickerson*, 126 M 157, 247 P 2d 188.

Possession Necessary for Defense

Under former section 94-605, subdivision 3, defendant who had been in peaceable possession of the premises, as owner thereof for months, had the right to defend such possession, provided he used no more force than was necessary for that purpose; it was error to refuse an instruction to that effect. *State v. Howell*, 21 M 165, 169, 53 P 314.

94-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

History: En. 94-3-104 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 7-3.

Commission Comment

The general principles of justification concerning the defense of person and occupied structure are applicable to a limited extent to the defense of real property other than an occupied structure, and personal property lawfully in the person's possession (or the possession of certain other persons): he may use force which he reasonably believes to be necessary to protect the property, but he may not use

deadly force except to prevent the commission of a forcible felony.

The right of a person to use force in preventing a trespass upon or interference with another person's property is limited to property in the possession of a member of the immediate family or household of the person using the preventive force, or is property the person using the preventive force has a legal duty to protect. The right of a private person to arrest one who commits or attempts a criminal offense in his presence supplements the right to use force in the defense of other property. See R. C. M. 1947, section 95-611.

DECISIONS UNDER FORMER LAW**Game Law Violation**

Landowner had a constitutionally protected right to kill elk out of season when necessary to prevent damage to his pastur-

age and other property and all other measures had failed. *State v. Rathbone*, 110 M 225, 100 P 2d 86.

94-3-105. Use of force by aggressor. The justification described in the preceding sections of this chapter is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use

of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

History: En. 94-3-105 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 7-4.

Commission Comment

Each of the preceding sections of this chapter has assumed that the person using force in defense has not committed an unlawful act which has inspired the use or threat of force against him, and has not otherwise provoked such force. This section concerns the much more limited right which a person has to defend himself, when he has committed an unlawful act or otherwise provoked the use of force. A person has no right of defense if he is attempting or committing a forcible felony, or is escaping after committing it; or if he has deliberately provoked the use of force against himself. Only a completed withdrawal, followed by a new encounter initiated by the other person, will reinstate a right of defense. (See Perkins, "Self-Defense Re-Examined," 1 U.C.L.A. L. Rev. 133 at 147 (1954).) However, if a person voluntarily engages in a fight or in some other manner, by words or actions provokes the use of force against himself which apparently will not involve the use

of deadly force, but unexpectedly is threatened with deadly force, he has a qualified right to protect himself by using deadly force. First, however, the original provocateur must use any method which is reasonably available to avoid the use of deadly force including a "retreat to the wall."

Subsections (2)(a) and (b) outline the cases in which the aggressor's right of self-defense is reinstated. The first is that which obtains when the aggressor, not using deadly force, is suddenly confronted with deadly force and has retreated, as he reasonably believes, to the practical limit but nevertheless reasonably believes that he must use deadly force to prevent death or serious bodily harm to himself.

The second case is that in which the aggressor in good faith withdraws from the conflict and effectively communicates to the victim his intention to withdraw, but the victim continues or resumes the conflict. The relation between the participants should be regarded as reversed, the initial aggressor becoming the victim. Section (2)(b) applies only to the use of nondeadly force in self-defense. (See State v. Merk, 53 M 454, 460, 164 P 655.)

DECISIONS UNDER FORMER LAW

Withdrawal from Combat

Under former sections 94-2513 and 94-2514, if the party committing the homicide was the assailant, or engaged in mortal combat, he must in good faith have en-

deavored to decline any further struggle before the killing was done, otherwise he could not invoke self-defense. State v. Merk, 53 M 454, 164 P 655.

94-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History: En. 94-3-106 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 7-9.

Commission Comment

An attempted escape by a person in custody after arrest and before being placed in confinement, or in a place of confine-

ment, requires the authorization of force necessary to recapture him. This section concerns the use of deadly force to prevent escape and not the use of force which is justifiable in making the original arrest.

The usual statement seems to be that a person lawfully arrested or confined may be killed if that is necessary to prevent escape; and no distinction is drawn between a felon and any other offender.

Recapture must be evaluated in the same manner as if it were an original arrest, and whether deadly force may be used to prevent an escape does not depend upon whether such force might have been authorized at the time of the original arrest. If the offense for which the person was arrested was not a forcible felony, but the offender was armed with a deadly weapon, deadly force might have been used to effect the arrest. If the offender was arrested and disarmed and later attempted to escape unarmed and without threatening death or serious bodily harm to anyone, deadly force to prevent his escape is not authorized. Conversely, if the offender was not armed or otherwise dangerous when arrested, but in attempting to escape he commits a forcible felony, or seizes an officer's gun and threatens to shoot anyone who opposes his escape,

deadly force may be used to prevent the escape.

Subsection (2) concerns escape from a place of confinement, as distinguished from personal custody after arrest. Here, other persons are likely to be in the same position of legal restraint as the one attempting to escape and may be encouraged by a successful escape to make a similar attempt either immediately or at a later time. Also, a guard or other person in charge of prisoners cannot be expected to know the history of each prisoner and whether his offense was a forcible felony or whether he is likely to endanger the lives of others if his escape is successful. In addition, the sudden and unexpected nature of an escape from confinement leaves the guard no time to investigate into the person's possession of a deadly weapon. In view of the often desperate nature of an escape of this kind, the prisoner can be expected to use any deadly force which he finds available. Consequently, a less restrictive rule as to the use of deadly force to prevent escape seems logical with respect to a guard, as compared with the rule concerning a personal custodian after the arrest but before the confinement of an offender or suspect.

94-3-107. Use of force by parent. A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice or pupil.

History: En. 94-3-107 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Revised Codes of Montana 1947, section 94-605(4).

Commission Comment.

This is a rewording of former section 94-605 (4). However "reasonable and necessary" was substituted for "reasonable in manner and moderate in degree."

DECISIONS UNDER FORMER LAW

Instructions

Stepfather charged with murder in alleged beating death of his stepchild was entitled to instructions on voluntary and involuntary manslaughter in view of testimony that his striking the child was for disciplinary purposes and that he never intended to hurt her. *State v. Taylor*, — M —, 515 P 2d 695.

Reasonable and Moderate

Under subdivision 4 of former section 94-605, a person standing in loco parentis was not entitled to a presumption that

punishment was reasonable and moderate, but state must prove that parent's act was willful, wrongful and unlawful and, in order to convict, jury must find that punishment was clearly unreasonable and immoderate after considering all the circumstances including (1) the age and understanding of the child, (2) the nature and seriousness of the act being punished, (3) the instrument used for punishment and (4) the severity and permanent or temporary nature of the resulting injuries. *State v. Straight*, 136 M 255, 347 P 2d 482.

94-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace

officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

History: En. 94-3-108 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 7-7.

Commission Comment

Section 94-3-108 states a corollary to the justification accorded to an officer in using force to make an arrest. Even if the arrest is unlawful, the person arrested is not privileged to resist the arrest with force. A resort to force invites the officer to use greater force to accomplish the arrest. The public interest in discouraging violence and insisting upon the use of peaceable methods for obtaining release from unlawful arrest clearly outweighs the right

of self-help or any momentary individual satisfaction. (This was the view of the Uniform Arrest Act, ¶ 6: see Warner, "The Uniform Arrest Act," 28 Va. L. Rev. 316 at 330, 331 (1942).) A partial recognition of the inadvisability of sanctioning resistance in the case of an unlawful arrest appears in the old rule that a person who kills an officer attempting an unlawful arrest is not justified, but is guilty of manslaughter rather than murder, in the absence of express malice. (1 Wharton's Criminal Law (12th ed.) ¶¶ 542 and 853; 1 Bishop on Criminal Law (9th ed.) ¶ 868 and 1 Bishop's New Criminal Procedure (3rd ed.) ¶ 162.)

94-3-109. Execution of death sentence. A public servant who, in the exercise of his official duty, puts a person to death pursuant to a sentence of a court of competent jurisdiction, is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

History: En. 94-3-109 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 7-10.

Commission Comment

This section states an obvious aspect of justification for homicide. It is included for the sake of completeness, and because it is one of the more commonly described statutory instances of justification. Section 94-3-109 is intended to state the

essentials of the prior provision in language similar to that of the other sections of this chapter. However, in view of the deliberate nature of the homicide, the explicit legal instructions concerning the execution and the much more relaxed time element involved in an execution as compared with self-defense, arrest, or escape, no need exists for recognizing a reasonable but mistaken belief of the executioner as to his authority for or method of performing his duty.

94-3-110. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm, if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

History: En. 94-3-110 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 7-11.

Commission Comment

Compulsion, coercion, or duress is another long-recognized basis for finding a person not guilty of an offense charged, although his conduct appears to be within the definition of the offense. The justification does not extend to action under threat of damage to property, or of injury less than serious bodily harm or even of death or serious bodily harm which is not imminent; but the person's reasonable fear of

imminent death or serious bodily harm if mistaken, is within the principle. (See 1 Bishop on Criminal Law (9th ed.) ¶¶ 346 to 348.)

This established type of formulation has been criticized. However, to broaden the defense to accord completely with the "free will" theory would be to invite routine contentions of some kind of pressure, such as "threats of harm to property, reputation, health, general safety, and to acts done under the orders," with accompanying assertion of individual personality weakness. (Newman and Weitzer, *supra*, at 334.) Prof. Wharton, after stating the established restrictions upon the defense, comments: "It would be a most dangerous

rule if a defendant could shield himself from prosecution for crime by merely setting up a fear from or because of threat

of a third person." (1 Wharton's Criminal Law (19th ed.), ¶ 384.)

94-3-111. Entrapment. A person is not guilty of an offense if his conduct is incited or induced by a public servant, or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent, merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

History: En. 94-3-111 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 7-12.

Commission Comment

The defense of entrapment generally follows the rule stated by the majority in the Sorrells case. (See "The Doctrine of Entrapment and Its Application in Texas," 9 Sw. L. J. 456 (1955); Note, 28 N.Y.U. L. Rev. 1180 (1953) recognizing three principal elements: (1) The idea of committing an offense originates, not with the

suspect, but with the enforcement authorities, who (2) actively encourage the suspect to commit the offense, (3) for the purpose of obtaining evidence for his prosecution.)

Most of the cases in which entrapment has been alleged involved a course of conduct, resulting apparently in repeated offenses of the same type or in a continuing offense, such as violation of the Medical Practice Act, illegal sale of liquor or narcotics or explosives, larceny, and ticket scalping.

94-3-112. Affirmative defense. A defense of justifiable use of force, based on the provisions of this chapter is an affirmative defense.

History: En. 94-3-112 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 7-14.

Commission Comment

A defense based upon any of the provisions of this chapter is an affirmative defense, and if not put in issue by the prosecution's evidence, the defendant, to raise it as an issue, must present some evidence thereon.

DECISIONS UNDER FORMER LAW

Burden of Proof

Testimony of defendant that he had acted in self-defense did not shift burden of proof to state to prove the falsity of his testimony since defendant had

burden of producing sufficient evidence on issue of self-defense to raise a reasonable doubt of his guilt. State v. Grady, — M —, 531 P 2d 681.

CHAPTER 4

INCHOATE OFFENSES

Section 94-4-101. Solicitation.

94-4-102. Conspiracy.

94-4-103. Attempt.

94-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

History: En. 94-4-101 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 8-1.

Commission Comment

Solicitation is not a separate statutory offense under the old code although R. C. M. 1947, section 94-204 provided that any

person counseling, advising or encouraging children under fourteen years, lunatics, or idiots, to commit any offense shall be prosecuted and punished the same as if he had committed the offense. It seems desirable to include solicitation as an offense in the traditional triad of inchoate

offenses as other states have done. In all cases the actor must have the requisite "purpose" of "promoting or facilitating" commission of an offense.

Subsection (2) provides the same maximum penalty for solicitation as may be imposed for the principal offense solicited.

DECISIONS UNDER FORMER LAW

Felony Murder Rule

Where defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit arson makes all the conspirators in the arson plot equally guilty of first degree murder. *State v. Morran*, 131 M 17, 306 P 2d 679.

Instructions to Jury

An instruction that a person who "advised or encouraged" another in the commission of a crime was to be considered a principal, instead of "advised and encouraged," the phrase used in former section 94-204, was not prejudicially erroneous, since the words "advised" and "encouraged" are synonymous in popular meaning. *State v. Allen*, 34 M 403, 416, 87 P 177.

In a prosecution for arson, where there was some testimony that defendant procured another to set the fire, the giving of instructions embodying the provisions of former sections 94-204 and 94-6423 was proper, as was the refusal of others directing the jury to find for the defendant unless satisfied beyond a reasonable doubt that he was present personally and set the fire himself. *State v. Chevigny*, 48 M 382, 385, 138 P 257.

Instructions substantially in the words of former sections 94-204 and 94-6423, defining a principal and telling the jury that the distinction between a principal and an accessory had been abrogated by statute, were not improper as implying that a felony had been committed. *State v. Wiley*, 53 M 383, 387, 164 P 84.

Larceny

Defendant who encourages and advises the crime of larceny is guilty as a principal, so that the testimony of the thief must be corroborated to convict for the related crime of receiving stolen property. *State v. Keithley*, 83 M 177, 271 P 449.

The fact that defendant may have been guilty of larceny by advising and encouraging the thief does not prevent him from being prosecuted instead for receiving the same stolen property. *State v. Webber*, 112 M 284, 116 P 2d 679.

Presence on Scene

One who advised and encouraged commission of a crime may be found guilty without having been present at the actual commission of the crime. *State v. Quinlan*, 84 M 364, 275 P 750.

Even though there was no evidence placing defendant at scene of crime, he could be held as an accomplice to larceny in view of possession of stolen property and other corroborating evidence. *State v. Gray*, 152 M 145, 447 P 2d 475.

94-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

- (a) has not been prosecuted or convicted; or
- (b) has been convicted of a different offense; or
- (c) is not amenable to justice; or
- (d) has been acquitted; or
- (e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

History: En. 94-4-102 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 8-2; also derived from Revised Codes of Montana 1947, sections 94-1101 and 94-7211.

Commission Comment

Section 94-4-102 provides for several changes in the law of conspiracy in Montana.

The purpose element in conspiracy has often proved elusive and difficult to identify because it is easily confused with the purpose element involved in the principal offense which is the object of the conspiracy. However, the very nature of the offense requires a purpose separate and distinct from the purpose required in a prosecution for the principal offense which is the object of the conspiracy. Since an agreement (by words, acts or understanding) is required, there must be (1) a purpose to agree, and the agreement must be accomplished with (2) a purpose that the offense which is the object of the agreement be committed. Statutes in other jurisdictions have attempted to spell out in more detail, and in various terminology, the two-fold nature of the purpose required. The commission felt that if the inchoate nature of conspiracy is kept in mind, the provision as drafted should be sufficiently clear. In addition, since the object of the conspiracy has been limited to criminal activity, there seems to be no compelling reason to express a statutory requirement of "corrupt motive" or "evil purpose."

Currently, acquittal of all conspirators but one absolves that one, since, theoretically, there must be at least two guilty parties to a conspiracy. However, this rationale is rejected as being too technical and overlooking the realities of trials which involve differences in juries, contingent availability of witnesses, the varying ability of different prosecutors and defense attorneys, etc. If the defendant obtains a full and fair trial what happened to another defendant at another time and place in another trial before a different judge and jury should not be a bar to a conviction.

Subsection (1) provides a defense if the accused would not be guilty of an offense if the conduct which is the object of the conspiracy is performed. Subdivision (2) (e) goes further and says that it is not a

defense for the accused to say that his co-conspirator would not be guilty of an offense if the conduct which is the object of the conspiracy were to be performed. Subdivision (2)(e) intended to deny to an accused who has no legal incapacity or immunity in relation to the principal offense, any rights, benefits, advantages, or defenses which the law may have conferred upon a coconspirator. This probably involves no change in the general rule of law which denies to an accused the legal disabilities of an accomplice, but probably (in conjunction with subdivision (2)(d)) involves a change in the present law of conspiracy where there are only two conspirators and the coconspirator has been acquitted because he lacks the capacity, due to some legal disability, to commit conspiracy.

One other important change should be noted: under subsection (1) conspiracy is committed when (with the required purpose) there is an agreement to commit any offense; this eliminates the possible application of the so-called "Wharton Rule" in conspiracy, which says that if the object of the agreement is a crime which (by its very nature) requires two or more persons to commit it, then the agreement does not amount to conspiracy because no greater danger is presented by the plurality of actors in the conspiracy than would be presented to the community in the commission of the principal offense. The commission felt that the Wharton Rule fails to take into account the preventive aspect of prosecuting conspiracies, that is, to discourage the more dangerous criminal activity of several persons by punishing the preliminary agreement to engage in such activity. That the criminal activity is of such nature as to inevitably require more than one person in its accomplishment seems the more reason to abrogate the Wharton Rule.

The problem of the extent of the conspiracy, as to multiple parties, multiple objects, or duration of the agreement has been a constant source of litigation, especially in the federal courts. An immense variety of factual situations are possible in this area, each with its own special considerations. Attempts to cover one or more of the possible fact situations by statute merely leads to the necessity of trying to cover more, so that the statutory provisions become so detailed as to risk non-coverage of fact situations through exclusion.

DECISIONS UNDER FORMER LAW

Allegations in Indictment

Under former section 94-1101, an indictment for a conspiracy to cheat and defraud a county had to allege the means by which the conspiracy was to be accom-

plished. An allegation that the defendants conspired "to cheat and defraud" was not sufficient. *Territory v. Carland*, 6 M 14, 15, 9 P 578.

Degrees of Crime

Different conspirators could be convicted of different degrees of homicide arising out of the same act. State v. Alton, 139 M 479, 365 P 2d 527.

Evidence against Coconspirator

After proof of a conspiracy, evidence of the acts or declarations of a conspirator relating to the object of the conspiracy may be admitted against a coconspirator. State v. Dotson, 26 M 305, 67 P 938.

Evidence of Conspiracy

Finding that there was a conspiracy was supported by evidence that within a few minutes' time prison inmates took complete control of the inside of the prison and made hostages of all custodial personnel

inside. State v. Alton, 139 M 479, 365 P 2d 527.

Presence on Scene

Conspirator may be convicted of crime without having been present at the actual commission of a crime. State v. Quinlan, 84 M 364, 275 P 750.

Responsibility of Conspirator

Prison inmate who took active part in inmate uprising, including taking of hostages and acting as spokesman for the inmates, could be held responsible for killing of guard during the course of the uprising, even though he was not present at the killing and even though the inmate who had done the shooting was dead. State v. Alton, 139 M 479, 365 P 2d 527.

94-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section, if under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

History: En. 94-4-103 by Sec. 1, Ch. 513, L. 1973.

Source: Derived from Revised Codes of Montana 1947, section 94-4711.

Commission Comment

As under prior law, it is not necessary that the attempt fail in order to sustain a conviction under this section. It is important to note that the "double jeopardy" statute applies and the attempt is an "included offense" if the attempt is successful.

One charged with an attempt to commit a crime may properly be convicted even though the evidence shows that the crime was completed. (State v. Benson, 91 M 21, 25, 5 P 2d 223.)

Subsection (1) requires a purpose to commit a specific offense and an act toward the commission of that offense.

Subsection (2) is intended to codify the general rule that a factual or legal impossibility (as distinguished from an inherent impossibility) is no defense to attempt. The phrase "misapprehension of the circumstances" is intended to include both factual and legal circumstances. An example of inherent impossibility would be an attempt to kill by witchcraft and is not intended to be excluded as a defense. However, factual impossibility (attempting to pick an empty pocket), or legal impossibility (attempting to receive stolen goods which are not stolen) would be no defense.

This attempt statute is designed to cover all special attempt provisions in the old code, such as "attempted arson," "attempted burglary," etc.

DECISIONS UNDER FORMER LAW**Completed Crime**

One charged with an attempt to commit a crime could properly be convicted as charged, under former section 94-4710,

even though the evidence showed that the crime had been completed. State v. Benson, 91 M 21, 5 P 2d 223.

Intent

Testimony that defendant, six days before, had solicited witness to join in a holdup, but without naming a specific victim, was insufficient to establish intent to rob when defendant committed a battery in a crowded bar but then did not do anything else toward the commission of a robbery. *State v. Hanson*, 49 M 361, 141 P 669.

evidence was not before the appellate court, it was presumed that the trial court properly fixed the punishment on a conviction for attempt to commit burglary. *State v. Mish*, 36 M 168, 175, 92 P 459.

Since court could have sentenced defendant, if guilty of the infamous crime against nature, to term of thirty years, it could fix one-half that term upon conviction for attempt. *State v. Stone*, 40 M 88, 92, 105 P 89.

Punishment

Under former section 94-4711, where the

CHAPTER 5**OFFENSES AGAINST THE PERSON****Part One. Homicide**

- Section 94-5-101. Criminal homicide.
 94-5-102. Deliberate homicide.
 94-5-103. Mitigated deliberate homicide.
 94-5-104. Negligent homicide.
 94-5-105. Sentence of death for deliberate homicide.
 94-5-106. Aiding or soliciting suicide.

Part Two. Assault

- 94-5-201. Assault.
 94-5-202. Aggravated assault.
 94-5-203. Intimidation.

Part Three. Kidnaping

- 94-5-301. Unlawful restraint.
 94-5-302. Kidnaping.
 94-5-303. Aggravated kidnaping.
 94-5-304. Sentence of death for aggravated kidnaping.
 94-5-305. Custodial interference.

Part Four. Robbery

- 94-5-401. Robbery.

Part Five. Sexual Crimes

- 94-5-501. Definitions.
 94-5-502. Sexual assault.
 94-5-503. Sexual intercourse without consent.
 94-5-504. Indecent exposure.
 94-5-505. Deviate sexual conduct.
 94-5-506. Provisions generally applicable to sexual crimes (94-5-501 to 94-5-505).

Part Six. Offenses against the Family

- 94-5-601. Definitions.
 94-5-602. Prostitution.
 94-5-603. Promoting prostitution.
 94-5-604. Bigamy.
 94-5-605. Marrying a bigamist.
 94-5-606. Incest.
 94-5-607. Endangering welfare of children.
 94-5-608. Nonsupport.
 94-5-609. Unlawful transactions with children.
 94-5-610. Unlawful possession of intoxicating substance by children.
 94-5-611. Administering drugs or using instruments with intent to produce miscarriage.
 94-5-612. Submitting to an attempt to produce miscarriage.

- 94-5-613. Short title.
- 94-5-614. Statement of purpose.
- 94-5-615. Definitions.
- 94-5-616. Consent to abortion.
- 94-5-617. Protection of life and health of infant.
- 94-5-618. Control of practice of abortion.
- 94-5-619. Reporting of practice of abortion.
- 94-5-620. Refusal to participate in abortion.
- 94-5-621. Other regulations.
- 94-5-622. Penalties.
- 94-5-623. Legislative intent.
- 94-5-624. Severability.

Part One

Homicide

94-5-101. Criminal homicide. (1) A person commits the offense of criminal homicide if he purposely, knowingly or negligently causes the death of another human being.

(2) Criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.

History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as the Model Penal Code, section 210.1.

Commission Comment

The criminal homicide section represents a complete departure from the old law, and the traditionally difficult concept of "malice aforethought." In an effort to eliminate this unsatisfactory terminology, the varying degrees of criminal homicide are differentiated by use of terms "deliberate homicide," "mitigated deliberate homicide" and "negligent homicide." This serves two purposes. First, these terms are more descriptive of the conduct proscribed. Second, judges, jurors and attorneys will not be misled as to the weight of prior law construing instructions on murder, manslaughter, etc.

The language used attempts to isolate the character of the offender's conduct and to differentiate the offenses according to the differing elements of that conduct. It is clear, for example, that causing death

purposely, knowingly or negligently must, in the absence of justification, establish criminality. The section also purposes the abandonment of the traditional distinction between first and second-degree murder, deriving from the Pennsylvania reform of 1794, under which the determinants of capital or potentially capital murder are deliberate and premeditated purpose to kill, or specific felony-murders. The section in this regard includes the following features: (1) the exclusion from the capital class of certain murders where a clear ground of mitigation is established; (2) a specification of aggravating circumstances, at least one of which must be established before a capital sentence is possible; (3) a final determination by the court as to the existence of mitigating circumstances.

There is no requirement that death must occur within any stated period of time. Time will be limited only by the need to prove a causal relation between conduct and the resulting death. (See section 94-2-105.)

DECISIONS UNDER FORMER LAW

Cause of Death

Instruction to jury which permitted conviction of involuntary manslaughter based on drunken driving without a finding that defendant's intoxication was a proximate cause of the death was improper and reversible error. *State v. Darchuck*, 117 M 15, 156 P 2d 173.

If defendant's wrongful conduct hastens death or extinguishes whatever chance the victim had to survive, defendant may be convicted of homicide even though the vic-

tim might not have survived even if defendant had acted properly. *State v. Mally*, 139 M 599, 366 P 2d 868.

Circumstantial Evidence

Tentative identification of defendants as having committed robbery near the scene of a homicide, evidence that the homicide occurred in the course of a robbery, finding of the fatal weapon in possession of a defendant, and fact that defendants were fleeing the scene, were sufficient to sup-

port verdict of guilty of murder in the course of a robbery. *State v. Miller*, 91 M 596, 9 P 2d 474.

Instructions on Degrees of Murder

Trial court properly instructed jury on second degree murder where homicide occurred after an alleged rape had been committed as a result of victim's threats to expose defendant's acts; court properly refused instruction that acts committed would justify verdict of either first degree murder or acquittal. *State v. Perry*, — M —, 505 P 2d 113.

94-5-102. Deliberate homicide. (1) Except as provided in section 94-5-103 (1) (a), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnaping, felonious escape or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in section 94-5-105, or by imprisonment in the state prison for any term not to exceed one hundred (100) years.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

Section 94-5-102 relates only to conduct which is done deliberately; that is, purposely or knowingly. The enumerated offenses in subsection (b) broaden the old law dealing with felony-murders, R. C. M. 1947, section 94-2503, to include any felony which involves force or violence against an individual. Since such offenses are usually coincident with an extremely high homicidal risk, a homicide which occurs during their commission can be considered a deliberate homicide. The section is intended to encompass most homicides tra-

Time of Death

Under former section 94-2509, it was not necessary to allege in an information for murder the date upon which the death occurred as distinguished from the date of assault. All that was necessary in order to constitute the crime of murder, the other requisite facts being proven, was that the death of the party occurred within a year and a day after the stroke received or the cause of death administered. *State v. Powers*, 39 M 259, 102 P 583.

ditionally designated as second-degree murder. Subsection (2) changes the punishment, providing that a person "shall be punished by death . . . or by imprisonment . . . for any term not to exceed one hundred (100) years," thus seeking to expand the sentencing latitude of the judge.

Information

In an information charging homicide, it is unnecessary to allege the means of producing death or the related felony, but merely whether it was committed purposely and knowingly, or committed while the defendant was engaged in commission of a felony. *State ex rel. McKenzie v. District Court of Ninth Judicial Dist.*, — M —, 525 P 2d 1211.

DECISIONS UNDER FORMER LAW

Burden of Proof

Under former section 94-2503, to sustain a conviction of murder in the first degree, it was incumbent upon the state to show by the record not only that it discharged the burden resting upon it to establish the killing by defendant, but also that it proved deliberation and premeditation on his part. *State v. Gunn*, 85 M 553, 555, 281 P 757.

Degrees of Murder

Murder committed in the perpetration or attempt to perpetrate robbery, burgla-

ry, etc., was murder of the first degree under former section 94-2503 and murder so committed is not divisible into degrees; the court need not have instructed as to murder of the second degree or manslaughter. *State v. Reagin*, 64 M 481, 210 P 86; *State v. Bolton*, 65 M 74, 212 P 504.

As a general rule the district court, in a trial for homicide, need not have given an instruction on second degree murder where the killing was charged to have been perpetrated in the commission of one of the felonies enumerated in former section 94-2503, or where there was no evi-

dence tending to show a lesser offense than murder in the first degree. *State v. Le Duc*, 89 M 545, 300 P 919.

The trial court did not err in giving an instruction on murder in the second degree under former section 94-2503, as against the contention of defendant that under his plea of self-defense he was either guilty of murder in the first degree or not guilty. *State v. Le Duc*, 89 M 545, 300 P 919.

Where the evidence in a prosecution for homicide under former section 94-2503 disclosed that the crime was committed during a robbery or an attempt to commit it, or failed to show that fact beyond a reasonable doubt, the only permissible verdict, under that section, on the one hand, was one of murder in the first degree, or, on the other, of acquittal, and under such conditions the court was not required to instruct on murder in the second degree; the rule was the same where the state relied on circumstantial evidence for conviction. *State v. Miller*, 91 M 596, 9 P 2d 474.

In murder prosecution under former section 94-2503, jury was properly instructed that if it found that killing was unlawfully done by defendant with deliberation, premeditation and malice aforethought, defendant was guilty of murder in first degree but if it believed that killing was unlawfully done with malice aforethought, although not deliberate and premeditated, or that defendant was incapable of premeditation and deliberation because of intoxication at time of killing, then crime was second degree murder. *State v. Brooks*, 150 M 399, 436 P 2d 91.

Deliberation and Premeditation

Where, under all the circumstances, it appeared unlikely that the defendant sought out the decedent to continue a previous affray but more likely that he accidentally came upon the decedent's party, verdict of guilty of first degree murder could not be upheld and the judgment was reduced to second degree. *State v. Gunn*, 89 M 453, 300 P 212.

Under former section 94-2503, after the state had made proof of the homicide charged the crime was presumed to be murder in the second degree and the burden then rested upon the state to introduce evidence satisfying the jury beyond a reasonable doubt that there was deliberation and premeditation to raise the crime to murder in the first degree. *State v. Le Duc*, 89 M 545, 300 P 919.

Where defendant was convicted of murder in the second degree under former section 94-2503, he was not prejudiced by an instruction that the deliberation and premeditation necessary to raise the crime to murder in the first degree could be formed

in an instant, even though the instruction was erroneous. *State v. Le Duc*, 89 M 545, 300 P 919.

Failure to Provide

Under former section 94-2501, an information charging a husband with a willful failure to provide for his wife and to protect her from the cold and inclement weather, as a result of which she died, sustained a conviction for murder in the second degree. *Territory v. Manton*, 7 M 162, 168, 14 P 637.

Felony Murder

Under former section 94-2503, homicide committed in the perpetration of or an attempt to perpetrate robbery was murder in the first degree, regardless of the absence of intent to commit the latter crime; the capability of entertaining the felonious intent to commit robbery was sufficient. *State v. Reagin*, 64 M 481, 210 P 86.

Evidence showing homicide in the course of a robbery could be introduced under an information charging willful, deliberate, unlawful, felonious and premeditated killing with malice aforethought. *State v. Bolton*, 65 M 74, 212 P 504.

Killing of a pursuer by bank robbers after a thirty-mile continuous and uninterrupted pursuit was first-degree murder within the felony-murder rule. *State v. Jackson*, 71 M 421, 230 P 370.

All who participated in a robbery, or an attempted robbery, during which a homicide was committed, were guilty of murder in the first degree under former section 94-2503, irrespective of which one of the participants fired the fatal shot. *State v. Miller*, 91 M 596, 9 P 2d 474.

Where all of the circumstances indicated homicide in the course of a robbery and the only real question was identification, request to instruct on lesser and included offenses was properly refused. *State v. Miller*, 91 M 596, 9 P 2d 474.

Evidence in a prosecution for murder at nighttime in the perpetration of burglary, supported by a full confession by defendant, was sufficient to warrant the extreme penalty under former section 94-2503. *State v. Zorn*, 99 M 63, 41 P 2d 513.

Defendant who hired two men to set fire and burn his service station, during the course of which the two men were burned and subsequently died, was guilty of first degree murder under the felony-murder rule since any death directly attributable to a plot to commit arson made all the conspirators in the arson plot equally guilty of first degree murder. *State v. Morran*, 131 M 17, 306 P 2d 679.

Under former section 94-2503, an information reciting commission of robbery and alleging that in perpetration of robbery, defendant killed deceased, charged murder

in first degree rather than two separate and distinct crimes of robbery and premeditated murder. In re Petition of Dixon, 149 M 412; 430 P 2d 642, cert. den. 390 US 907, 88 S Ct 824.

Under the felony-murder rule in former section 94-2503, both parties were guilty of murder in first degree where evidence clearly showed that both had kidnaped and robbed victim but did not clearly show which of two had shot and killed victim. State v. Corliss, 150 M 40, 430 P 2d 632, cert. den. 390 US 961, 88 S Ct 1063.

Indictment

An indictment for murder good at common law was good under former section 94-2501. Territory of Montana v. Stears, 2 M 324; Territory of Montana v. Young, 5 M 242, 5 P 248; State v. Lu Sing, 34 M 31, 85 P 521; State v. McGowan, 36 M 422, 93 P 552.

Under former section 94-2501, in an information for murder, it was sufficient to allege that the killing was with malice aforethought; the elements of premeditation and deliberation were matters of proof. Territory of Montana v. Stears, 2 M 324; Territory of Montana v. McAndrews, 3 M 158; State v. Metcalf, 17 M 417, 43 P 182; State v. Lu Sing, 34 M 31, 85 P 521; State v. Hayes, 38 M 219, 99 P 434; State v. Nielson, 38 M 451, 100 P 229. See also State v. Guerin, 51 M 250, 152 P 747.

Under former section 94-2501, an information charging that accused committed a murder willfully, unlawfully, feloniously, and premeditatedly, and of his malice aforethought, charged murder in the first degree, even though it failed to use the word "deliberately." State v. Hliboka, 31 M 455, 457, 78 P 965.

It was not necessary under former section 94-2503, to allege that the acts of the accused were done deliberately to sustain a conviction of murder of the first degree, and allegations sufficient for a common-law indictment were sufficient for an information. State v. Lu Sing, 34 M 31, 85 P 521. See also State v. McGowan, 36 M 422, 93 P 552; State v. Wolf, 56 M 493, 185 P 556, distinguished in 142 M 459, 461, 384 P 2d 749.

Under former section 94-2501 an information stating that the defendant unlawfully, feloniously, willfully, premeditatedly, deliberately, and with malice aforethought, shot and killed a person named, a human being, sufficiently charged murder. State v. Crean, 43 M 47, 53, 114 P 603.

Instructions to Jury

In a prosecution for murder in the first degree under former section 94-2503, appellant could not complain of the failure of the court to instruct on the sub-

jects of manslaughter or murder of the second degree in the absence of an offer by him of instructions on those subjects. State v. Reagin, 64 M 481, 210 P 86.

In prosecutions for first degree murder, trial court did not err in refusing defendant's proposed instructions in the language of the section on proof of corpus delicti where the matter of proof beyond a reasonable doubt was included in another instruction. State v. Quigg, 155 M 119, 467 P 2d 692.

In prosecution for murder, trial court erred by giving instruction describing state's burden as "only that degree of proof," and proof beyond a reasonable doubt as "only such proof as may be" since the inclusion of the word "only" could tend to confuse a jury composed of laymen and in effect dilute the degree of guilt and proof the state is bound to establish. State v. Taylor, — M —, 515 P 2d 695.

Lesser Included Offense

Under former section 94-2503, where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

Lying in Wait

Where defendant had robbed a bank and in the course of his escape drove his automobile into a coulee, stopped his machine and shortly thereafter shot and killed one of his pursuers when he appeared on the top of a hill, an instruction that homicide committed by lying in wait constituted murder in the first degree under former section 94-2503 was proper. State v. Jackson, 71 M 421, 230 P 370.

Malice Aforethought

Under former section 94-2501, the distinction between murder and manslaughter was that the element of malice aforethought entered into the former, while it was wanting in the latter. State v. Sloan, 22 M 293, 56 P 364.

Sufficient malice aforethought to support conviction of second degree murder was shown by defendant's firing of weapon at combatants, even though there was no specific intent to kill and even though the one killed was the one defendant sought to protect. State v. Chavez, 85 M 544, 281 P 352.

Sentence for Second-Degree Murder

Second-degree murder sentence of forty years in state prison imposed by trial judge under former section 94-2505 was not unduly harsh and unreasonable even when jury first attempted to return a verdict of ten years without parole. State v. Brooks, 150 M 399, 436 P 2d 91.

94-5-103. Mitigated deliberate homicide. (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for any term not to exceed forty (40) years.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

Section 94-5-103 specifies the circumstances under which the punishment for deliberate homicide is mitigated.

DECISIONS UNDER FORMER LAW

Election of Charge

Trial court committed reversible error in failing to admonish jury to disregard testimony introduced to show evidence of intent in order to prove crime of voluntary manslaughter when, at end of defendant's case, trial court granted a motion requiring state to elect between charge of voluntary and involuntary manslaughter and the state elected to specify the charge as involuntary manslaughter; evidence admitted for purpose of proving intent was irrelevant to charge of involuntary manslaughter. *State v. Newman*, — M —, 513 P 2d 258.

Instructions

Where there was evidence showing defendant to be guilty of either murder of the first or second degree or manslaughter, the court had to give explicit instructions to the jury that a verdict of manslaughter as described by former section 94-2507 could be returned, under the rule that where the evidence warrants it, instructions must be given upon every offense included in the crime charged. *State v. Mumford*, 69 M 424, 222 P 447.

Where judge instructed the jury in the language of former section 94-2507, thereby giving the jury the definitions of both voluntary and involuntary manslaughter, defendant could not complain on ground there was no evidence of voluntary manslaughter where the jury found him guilty of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279.

Instruction that jury must have found beyond a reasonable doubt that the action of the "defendant contributed to or was the proximate cause of the death" of the decedent was an incorrect statement of law since the use of the word "or" could have been understood to have meant that the actions of the defendant need not have proximately caused the death but only

contributed to it. *State v. Newman*, — M —, 513 P 2d 258.

Instruction reading in part "if you find . . . that the deceased . . . was laboring under the effects of a poor physical condition, or had an alcoholic problem, to such a degree that in all probability these factors would have ultimately shortened her life, and if you further find the defendant inflicted a blow or blows upon the deceased which hastened or accelerated her death . . . this is sufficient to constitute the crime of involuntary manslaughter as previously defined in these instructions," was defective as a comment on the evidence and because the instruction could be understood to mean that the actions of the defendant need not have proximately caused the death of decedent but only contributed to it. *State v. Newman*, — M —, 513 P 2d 258.

Stepfather charged with murder in alleged beating death of his stepchild was entitled to instructions on voluntary and involuntary manslaughter in view of testimony that his striking the child was for disciplinary purposes and that he never intended to hurt her. *State v. Taylor*, — M —, 515 P 2d 695.

Intoxication

In murder prosecution, jury was properly instructed that if killing was unlawfully done by defendant without malice or if he was so intoxicated at time of killing that he was incapable of harboring malice aforesaid, crime was manslaughter as described by former section 94-2507. *State v. Brooks*, 150 M 399, 436 P 2d 91.

Sudden Quarrel

Former section 94-2507 was a recognition of the frailty of human nature, and had as its purpose the reduction of a homicide committed under the circumstances therein contemplated to the grade

of manslaughter. *State v. Messerly*, 126 M 62, 244 P 2d 1054.

Sufficiency of Evidence

Evidence that defendant was wearing a peculiar sweatshirt which was later found wet and bloody near the scene of the murder along with a paring knife and a

pair of wet and bloody trousers with the pockets ripped out, one of which pockets was later discovered and identified as part of the trousers belonging to defendant, was sufficient to sustain conviction of second degree murder. *State v. Fitzpatrick*, — M —, 516 P 2d 605.

94-5-104. Negligent homicide. (1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-5-104 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 210.4.

Commission Comment

Section 94-5-104 is addressed to homicides caused by negligence as defined in section 94-2-101(32). The negligence applicable to criminal homicide requires that the homicidal risk be of such a nature and degree that to disregard it involves a "gross deviation" from the standard of conduct that a reasonable person would observe in the actor's situation.

This code provision is especially relevant to vehicular homicides, since it is inevitable that they will predominate in

number. In this country, however, it has been very difficult to convict the negligent motorist of a criminal homicide. Several states have attempted with varying success to deal with the problem by enacting special legislation, but such legislation should not be necessary in Montana with proper application of this provision. Clearly, if the evidence does not make out a case of negligence, as negligence is herein defined, there is no reason for creating criminal liability for homicide, as distinguished from any other traffic offense. However, because of the diverse facts surrounding negligent homicides the sentencing judge is given freedom to sentence the act either as a misdemeanor or a felony. See section 94-1-105.

DECISIONS UNDER FORMER LAW

Degree of Negligence

The negligent handling of a loaded firearm causing or contributing to the death of another person, could be found to support of conviction of involuntary manslaughter within the meaning of subdivision 2 of former section 94-2507. *State v. Kuum*, 55 M 436, 178 P 238.

Conviction of involuntary manslaughter in the commission of a lawful act under former section 94-2507 required a higher degree of negligence than to establish liability in a civil case; it required aggravated, culpable or gross negligence, or recklessness, a disregard for human life or an indifference to consequences, such a departure from the conduct of an ordinarily prudent or careful man under the circumstances as to be incompatible with a proper regard for human life. *State v. Powell*, 114 M 571, 138 P 2d 949.

Evidence in a manslaughter prosecution showing that defendant driver, blinded by bright lights of an approaching car, drove off the highway into a shallow depression filled with a pile of rocks hidden by brush, causing the car to sideswipe a tree, was insufficient to sustain conviction on theory of criminal negligence. *State v. Bast*, 116 M 329, 337, 151 P 2d 1009.

Where the court instructed the jury

that in order to find the defendant guilty of manslaughter under former section 94-2507, it must find that the defendant committed an unlawful act, not amounting to a felony, and that the unlawful act was the proximate cause of the injury and death; and then in a later instruction defined criminal negligence as such that amounts to a wanton, flagrant, or reckless disregard of consequences or willful indifference of the safety or rights of others, the instructions taken as a whole are correct. For while the former may, standing alone, be inaccurate or even erroneous, yet as qualified and explained by other portions of the charge, in *pari materia*, it fully and fairly submitted the case to the jury. *State v. Bosch*, 125 M 566, 242 P 2d 477.

Instruction permitting conviction on findings that defendant was on wrong side of road and that decedent in no way contributed to the accident was reversible error in that it did not require union of act and criminal negligence and there was no instruction to consider the instructions as a whole. *State v. Strobel*, 130 M 442, 304 P 2d 606, explained in 134 M 519, 525, 333 P 2d 1017, 1021.

Defendant who deliberately drove his car around curve at a speed which he must

have known was dangerous to the lives of himself and his passengers was properly convicted of involuntary manslaughter under former section 94-2507. *State v. Pankow*, 134 M 519, 333 P 2d 1017, 1019.

Lack of due caution or circumspection as required by former section 94-2507, in lawfully correcting child could be found from doctor's testimony that basal skull fracture and fatal liver transection required severe and extensive force. *State v. Henrich*, 159 M 365, 498 P 2d 124.

Double Jeopardy

Prosecution for involuntary manslaughter under former section 94-2507 was not barred by defendant's prior conviction upon guilty pleas to driving while intoxicated and operating motor vehicle with improper brakes arising from same accident. *State v. McDonald*, 158 M 307, 491 P 2d 711.

Failure to Provide

Failure of parents to provide food for baby, with resulting death from starvation, the baby weighing only ten ounces more at five months than at birth, was such culpable negligence as to show a disregard for human life or an indifference to consequences, and would support a conviction for involuntary manslaughter even without an intention to cause death. *State v. Bischert*, 131 M 152, 308 P 2d 969.

Husband's failure to provide medical attention for wife for two days after she fell and sustained serious injuries was such culpable negligence as to support conviction for involuntary manslaughter, even though wife protested that she did not need attention, where she was in semicomatose condition and obviously did need attention. *State v. Mally*, 139 M 599, 366 P 2d 868.

In prosecution for involuntary manslaughter based on failure to provide medical attention, the state had no duty to prove that defendant could pay for medical attention and it was a matter of defense to show that defendant could neither pay for attention nor obtain it under the poor relief laws. *State v. Mally*, 139 M 599, 366 P 2d 868.

Where wife died from subdural hematoma after a period of unconsciousness, husband's failure to summon medical assistance for period of twenty-eight hours was not such degree of culpable negligence as to support a conviction of involuntary manslaughter under former section 94-2507 where unconsciousness appeared to have been from intoxication, wife appeared to be breathing well, and friend advised only bed rest. *State v. Decker*, 157 M 361, 485 P 2d 695.

Indictment and Information

An information charging that defendant "did willfully, unlawfully, knowingly and feloniously kill one B., a human being, contrary to the form" etc., was sufficient to charge manslaughter under former section 94-2507, even though it did not specify whether the crime had been either voluntarily or involuntarily committed. *State v. Gondeiro*, 82 M 530, 268 P 507, overruled on other grounds in *State v. Bosch*, 125 M 566, 242 P 2d 477.

Instructions to Jury

Defendant could not complain of jury instruction in the language of former section 94-2507, including the definitions of both voluntary and involuntary manslaughter, on ground there was no evidence of voluntary manslaughter, where the jury found him guilty only of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279.

When court withdrew murder charge and submitted case to jury on question of manslaughter, it should have modified its instruction on intent to cover intent required for manslaughter, but failure to do so was not prejudicial to defendant convicted only of involuntary manslaughter. *State v. Allison*, 122 M 120, 199 P 2d 279.

Intent

In prosecution for involuntary manslaughter under former section 94-2507 the issue was one of criminal negligence rather than intent, and instruction that "intent is not an element of involuntary manslaughter" was proper. *State v. Souhrada*, 122 M 377, 204 P 2d 792.

Willful or evil intent was not an element of involuntary manslaughter under former section 94-2507. *State v. Souhrada*, 122 M 377, 204 P 2d 792; *State v. Messerly*, 126 M 62, 244 P 2d 1054; *State v. Pankow*, 134 M 519, 333 P 2d 1017.

In murder prosecution, jury was properly instructed that if killing was unlawfully done by defendant without malice or if he was so intoxicated at the time of killing that he was incapable of harboring malice aforethought, crime was manslaughter as described by former section 94-2507. *State v. Brooks*, 150 M 399, 436 P 2d 91.

Juvenile Defendant

Driving while intoxicated was an unlawful act within the meaning of former section 94-2507 even though, because defendant was a juvenile, he could have been prosecuted only under the Juvenile Act. *State v. Medicine Bull*, 152 M 34, 445 P 2d 916.

Lesser Included Offense

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of

involuntary manslaughter under former section 94-2507. *State v. Allison*, 122 M 120, 199 P 2d 279.

94-5-105. Sentence of death for deliberate homicide. (1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison; or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The deliberate homicide was committed by means of torture; or

(d) The deliberate homicide was committed by a person lying in wait or ambush; or

(e) The deliberate homicide was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(2) Notwithstanding the provisions of subsection (1) and regardless of circumstances, when a defendant is convicted of the offense of deliberate homicide under subsection (1) (a) of section 94-5-102 in which the victim was a peace officer killed while performing his duty the court shall impose a sentence of death.

History: En. 94-5-105 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 262, L. 1974.

Source: New.

Commission Comment

Section 94-5-105 is an attempt to satisfy apparently conflicting objectives: First, the electorate of Montana voted to retain the death penalty; and second, the United States Supreme Court in the case of *Furman v. Georgia*, 408 US 238, 33 L Ed 2d 346, 92 S Ct 2726, held the Georgia and Texas capital punishment statutes unconstitutional. However, the case is composed of nine separate opinions, including four dissents and it is almost impossible to be certain as to the precise meaning of the decision. A best guess indicates that if any capital punishment statute is to achieve constitutional approval it must be both mandatory and specific. Subsection (1) purports to establish mandatory capital punishment by use of the term "shall." This is followed by a humanistic escape valve in the phrase, "unless there

are mitigating circumstances." The terms are apparently contradictory—but, in fact, the mandatory language is subject to the exception and ultimately only a test case in the United States Supreme Court can ascertain the constitutionality of the provision.

The listed circumstances, subdivisions (a) through (f), attempt to isolate the most objectionable and the most socially frightening forms of criminal homicide. These should be sufficiently specific to satisfy a majority of the United States Supreme Court as well as comprehensive enough to satisfy a majority of the Montana electorate.

Amendments

The 1974 amendment deleted former subdivision (1)(c) which read: "The victim of the deliberate homicide was a peace officer killed while performing his duty; or"; redesignated the subdivisions in subsection (1) accordingly; and added subsection (2).

DECISIONS UNDER FORMER LAW**Constitutionality**

By decision of the U.S. Supreme Court, statutes allowing the sentencer discretion as to whether to impose the death penalty were unconstitutional; although the conviction would be upheld, sentence of death made at discretion of the court under former statute was unconstitutional and

would be commuted to life imprisonment. *State v. Rhodes*, — M —, 524 P 2d 1095.

Lying in Wait

Where defendant had robbed a bank and in the course of his escape drove his automobile into a coulee, stopped his machine and shortly thereafter shot and

killed one of his pursuers when he appeared on the top of a hill, an instruction that homicide committed by lying in wait constituted murder in the first

degree under former section 94-2503 was proper. *State v. Jackson*, 71 M 421, 230 P 370.

94-5-106. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-5-106 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

If the conduct of the offender made him the agent of the death, the offense is criminal homicide notwithstanding the consent or even the solicitations of the

victim. See sections 94-5-101 through 94-5-105.

Rather than relying on aiding or soliciting an attempted homicide, this section sets forth the specific formula to make such acts punishable. The rationale behind the felony sentence for the substantive offense of aiding or soliciting suicide is that the act typifies a very low and dangerous regard for human life.

Part Two

Assault

94-5-201. Assault. (1) A person commits the offense of assault if he:

- (a) purposely or knowingly causes bodily injury to another; or
- (b) negligently causes bodily injury to another with a weapon; or
- (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another whether or not the offender believes the firearm to be loaded.

(2) A person convicted of assault shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-5-201 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 211.1.

Commission Comment

This section codifies what is generally known as "simple assault." The section makes several changes in the old assault law. The primary change is that it sets forth the elements of the offense of assault specifically rather than assigning to the offense conduct not covered by other more serious assault provisions. Another change is that the offense must be com-

mitted purposely, knowingly or negligently, thus maintaining the intent element consistent with the other proposed statutes dealing with offenses against the person. It should be noted that "battery," i.e., actual bodily injury or contact of some kind, is an essential element of the offense of assault in all instances except those arising under subdivision (1)(d). The type of apprehension required as an element of the offense under subdivision (1)(d) is apprehension of bodily injury, and not apprehension of mere physical contact. (See section 94-2-101 (54), bodily injury.)

DECISIONS UNDER FORMER LAW

Instructions

Instructing jury on assault by willfully inflicting grievous bodily harm when defendant had been charged with assault with intent to prevent or resist his lawful detention or apprehension was harmless error where the evidence conclusively demonstrated defendant's guilt of the offense charged. *State v. Jones*, — M —, 505 P 2d 97.

Instructions to Jury

Where the only evidence of assault was by pointing a firearm, defendant was guilty of assault in the second degree under former section 94-602 or not guilty at all, so that it was error to give an instruction on the law applicable to assault in the third degree as defined in former section 94-603. *State v. Karri*, 84 M 130, 276 P 427.

It was error to refuse defendant's instructions defining assault in the third degree under former section 94-603, and instead to instruct the jury as to assault

in the first and second degree under former sections 94-601 and 94-602 respectively, but omitting any instructions defining what felony was intended to be committed by assaulting a person with a gun. Since the jury had no way of knowing what felony, if any, the defendant intended to commit upon a person by pointing a gun at him, the jury should have been allowed to consider whether or not defendant was guilty of third degree assault. *State v. Quinlan*, 126 M 52, 244 P 2d 1058, overruled on other grounds in 158 M 102, 111, 489 P 2d 99.

Intent

A verdict finding a defendant guilty of an assault with corrosive acids and caustic chemicals, which failed to find that the assault was committed willfully or maliciously, or with intent to injure, was a verdict of guilty of assault in the third degree under former section 94-603. *State v. District Court*, 35 M 321, 324, 89 P 63.

94-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

- (a) serious bodily injury to another; or
- (b) bodily injury to another with a weapon; or
- (c) reasonable apprehension of serious bodily injury in another by use of a weapon; or
- (d) bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

History: En. 94-5-202 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 211.1(2).

Commission Comment

This section covers assaults committed under circumstances of aggravation. The elements of assault generally must be present in addition to the aggravating factor of causing serious bodily injury (See section 94-2-101(54) with purpose or knowledge. It should be noted that the crime of battery is merged within the assault provision by direct reference to physical contact, bodily injury and serious bodily

injury in section 94-5-201(a) and (b) and (c) and section 94-5-202(a) and (b). Classical assault in a tort sense is included in sections 94-5-201(d) and 94-5-202(c).

Weapons Used

Multiple counts of aggravated assault under subdivision (1)(b), specifying various probable weapons, are unnecessary to inform the defendant of the charges against him since an information of aggravated assault naming weapons in the alternative fulfills the notice requirements. *State ex rel. McKenzie v. District Court of Ninth Judicial Dist.*, — M —, 525 P 2d 1211.

DECISIONS UNDER FORMER LAW

Grievous Bodily Harm

Instruction defining term "grievous bodily harm" as used in subdivision 3 of former section 94-602 to include any injury calculated to interfere with the health or comfort of the person injured, and that the word "grievous" means atrocious, aggravated, harmful, painful, hard

to bear and serious in nature, was proper. *State v. Laughlin*, 105 M 490, 73 P 2d 718.

Instructions to Jury

Defendant charged with second degree assault under former section 94-602 but convicted only of third degree assault

under former section 94-603 was not prejudiced by jury instruction comprising all the subdivisions of section 94-602. *State v. Farnham*, 35 M 375, 89 P 728.

Intent

It was not necessary to allege, in an information for an assault and battery in the second degree, as defined in subdivision 3 of former section 94-602, that "the assault was committed with the intent to inflict grievous bodily harm," be word "intent" in defining the crime. State cause the statute did not include the *v. Broadbent*, 19 M 467, 48 P 775. See also *State v. Bloor*, 20 M 574, 52 P 611; *State ex rel. Webb v. District Court*, 37 M 191, 95 P 593.

In cases of assault of the first degree under former section 94-601 where the specific charge in the information was "assault with intent to kill," the instruction should have omitted all reference to murder or manslaughter, and advised jurors, in lieu thereof, that, to sustain the information, they must find, beyond a reasonable doubt, that the assault was committed with intent to kill. *State v. Schaefer*, 35 M 217, 88 P 792, distinguished in 135 M 139, 147, 337 P 2d 924.

Evidence was insufficient to justify a conviction of second degree assault with a deadly weapon under former section 94-602 where it was disclosed that the defendant was hunting jack rabbits at the time; that he never knew the prosecuting witness prior to the day of the alleged assault; that the rifle was extremely sensitive and would fire upon being brushed against an object such as clothing or even a change in temperature might fire the gun; and that the defendant was an instructor in firearms in the army during the war and would not have missed from the distance of eight feet had he been aiming at the prosecuting witness. *State v. Smith*, 126 M 124, 246 P 2d 227.

In prosecutions for first degree assault under former section 94-601, the element of felonious intent had to be determined from the facts and circumstances of the particular case; criminal intent is rarely susceptible of direct or positive proof and therefore must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence. *State v. Madden*, 128 M 408, 276 P 2d 974.

Proof of specific intent was necessary in second degree assault charges only under subdivisions 1, 2 and 5 of former section 94-602. *State v. Straight*, 136 M 255, 347 P 2d 482.

That defendant was able to form specific intent to commit first degree as-

sault under former section 94-601 was properly inferred from evidence that, although intoxicated, defendant turned off lights inside apartment, reached into nearby drawer and prepared revolver for action, surrendered to police, walked out of apartment under own power with hands in air and after arrest had no difficulty in recounting recent events to police. *State v. Lukus*, 149 M 45, 423 P 2d 49.

Refusal to instruct that in every crime there must exist union or joint operation of act and intent or criminal negligence as provided by statute was not error in prosecution for second degree assault as defined in subdivision 4 of former section 94-602 which required only general non-statutory intent to do harm willfully, wrongfully and unlawfully and did not require specific statutory intent to do any particular kind or degree of injury to victim. *State v. Fitzpatrick*, 149 M 400, 427 P 2d 300.

In prosecution for first-degree assault under former section 94-601, instruction dealing with intent and proof thereof was properly given since intent was essential element of crime. *State v. Gallagher*, 151 M 501, 445 P 2d 45.

Specific intent was not a necessary element of second degree assault under former section 94-602 upon showing of willful or wrongful infliction of grievous bodily harm upon another, and court properly refused instruction thereon notwithstanding statute providing that there must be unity of act and intent since latter statute was not applicable if specific intent was not an ingredient of crime charged. *State v. Warrick*, 152 M 94, 446 P 2d 916.

Dismissal of first degree assault charge under former section 94-601 was properly refused where there was evidence to support finding of jury that defendant had necessary intent. *State v. Bentley*, 155 M 383, 472 P 2d 864, distinguished in 157 M 452, 458, 486 P 2d 863.

Intent was to be judged objectively in first degree assault cases under former section 94-601 and not by the secret motive of the actor or some undisclosed purpose merely to frighten. *State v. Cooper*, 158 M 102, 489 P 2d 99, overruling *State v. Quinlan*, 126 M 52, 244 P 2d 1058.

Lesser Included Offense

In a prosecution for assault in the first degree under former section 94-601 the court could properly submit to the jury the question whether, in the evidence, the defendant, if not guilty as charged, was not guilty of assault in the second degree. *State v. Papp*, 51 M 405, 153 P 279.

Where the only evidence of assault was by pointing a firearm, defendant was either

guilty of second degree assault under former section 94-602 or not guilty of any offense, so that the giving of an instruction on third degree assault under former section 94-603 was error. *State v. Karri*, 84 M 130, 276 P 427.

Where the facts disclosed by the evidence under an information charging first degree assault under former section 94-601 constituted at least a second degree assault under former section 94-602 as found by the jury, or no offense at all, court was correct in not giving an instruction on third degree assault as described by former section 94-603, particularly where the record did not disclose any request for such an instruction. *State v. Satterfield*, 114 M 122, 132 P 2d 372.

Trial court properly refused to instruct jury on third degree assault under former section 94-603 and limited jury's determination to conviction on second degree assault under former section 94-602 or acquittal, where grievous bodily harm was inflicted and only issue was whether act causing injury was accidental. *State v. Manning*, 160 M 50, 499 P 2d 771.

Pleadings

An information charging defendant with having willfully, unlawfully, and feloniously assaulted a person with a piece of iron pipe, with intent to inflict grievous bodily harm, was sufficient to charge the defendant with an assault with intent to commit a felony under former section 94-602, and gave the district court jurisdiction to try the cause. *State v. Farnham*, 35 M 375, 89 P 728.

An information charging that defendant "did willfully, unlawfully, wrongfully, intentionally, and feloniously assault one S., by throwing said S. from a moving streetcar, with intent to inflict grievous bodily harm upon said S.," was sufficient to charge assault in the second degree, under subdivision 3 of former section 94-602. *State v. Tracey*, 35 M 552, 90 P 791.

An information charging assault in the first degree with a deadly weapon under former section 94-601 was sufficient, the words following descriptive of the weapon, "to wit, an instrument about a foot long with a knob on the striking end," being surplusage, the only effect of which was to confine the prosecution to proof that the assault was committed with the instrument described and not with some other. *State v. Maggert*, 64 M 331, 209 P 989.

In charging the crime of assault in the second degree under former section 94-602, by willful or wrongful wounding or inflicting grievous bodily harm upon another, either with or without a weapon, the use of the word "feloniously" was not an

adequate substitute for "willfully" or "wrongfully." *State v. Williams*, 106 M 516, 79 P 2d 314.

Information charging defendant with unlawfully threatening another by pointing a loaded revolver at him charged a criminal offense under former section 94-602. *State v. Storm*, 124 M 102, 220 P 2d 674.

Information charging that defendant committed assault in the second degree under former section 94-602 by willfully, wrongfully, unlawfully, and feloniously assaulting a human being by wounding and inflicting grievous bodily harm contrary to form, force and effect of statute, sufficiently informed defendant of the crime with which he was charged. *State v. Straight*, 136 M 255, 347 P 2d 482.

Under former section 94-6423 information containing single count charging second degree assault under former section 94-602 was proper where only that crime was involved with at least two different ways of committing it; one by a direct assault and the other by aiding and abetting. *State v. Zadick*, 148 M 296, 419 P 2d 749.

Probable Cause

Denial of state's second application for leave to file information charging assault on ground that probable cause was not shown was an abuse of discretion where supplementary proof as to probable cause in the form of affidavits of deputy county attorney and six witnesses and copy of police report were filed, and where the district court, had, in denying first application for failure to have witnesses endorsed thereon, commented that probable cause existed. *State ex rel. McLatchy v. District Court*, 144 M 216, 395 P 2d 245.

While mere recital of injuries was not medically precise or overwhelmingly persuasive, but did show that injuries had been inflicted and that doctor, who was to testify at trial, had examined the victim, there was sufficient evidence stated in the information to establish probable cause that a second degree assault under former section 94-602 had been committed. *State ex rel. Pinsonneault v. District Court*, 145 M 233, 400 P 2d 269.

Sentence

Defendant was properly given eighteen-year sentence for assault in first degree under former section 94-601 where he plead guilty to three prior felony convictions. *State v. McLeod*, 131 M 478, 311 P 2d 400.

Sufficiency of Evidence

Where evidence did not show that defendant pointed gun at sheriff after he

was handed paper by deputy which purported to be a warrant but was not, evidence was insufficient to support a conviction under either subdivision 4 or 5 of former section 94-602. *State v. Storm*, 124 M 102, 220 P 2d 674.

Evidence was sufficient to justify a conviction of second degree assault under former section 94-602, when it was shown that defendant was with a group of boys who fired a barrage of shots at a house and some of the pellets hit the house; fact that prosecuting witness had moved to a position away from line of fire did not prevent the attack from being an assault upon him. *State v. Simon*, 126 M 218, 247 P 2d 481.

Evidence that defendant had previously threatened to kill sheriff and shortly thereafter pointed a loaded rifle at his stomach at point blank range and said he was going to shoot him supported conviction of first degree assault under former section 94-601. *State v. Cooper*, 158 M 102, 489 P 2d 99.

Where testimony indicated that only use of pistol by defendant was in restraining three girls who were hard to manage, used foul language, had taken sunglasses off racks with no apparent interest in purchasing any, spent a long time in the restroom, attempted to sell defendant and his helper magazines, and that one of the girls had thrown a pop bottle in the general direction of the de-

fendant, and there was no substantial evidence as to the fear or apprehension of the girls, trial court's conviction of second degree assault under former section 94-602 was reversed. *State v. Sanders*, 158 M 113, 489 P 2d 371.

Variance between Charge and Proof

In a case in which the information charged assault with intent to commit rape, it was correct to instruct that the jury could find defendant guilty of either assault in the second degree or not guilty, and the instruction did not have to be that defendant was either guilty of assault with intent to commit rape or not guilty. *State v. Collins*, 88 M 514, 294 P 957.

Where defendant was charged with assault in the second degree as defined in subdivision 4 of former section 94-602 by use of a weapon likely to cause grievous bodily harm, it was error to introduce evidence that defendant in pointing firearm was resisting a lawful arrest by sheriff in violation of subdivision 5 of that section. *State v. Storm*, 124 M 102, 220 P 2d 674.

Even though, in an information charging second degree assault under former section 94-602, it was not charged specifically that a belt was used in the assault, admission of evidence that a belt was used was not error. *State v. Straight*, 136 M 255, 347 P 2d 482.

94-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

- (a) inflict physical harm on the person threatened or any other person or on property; or
- (b) subject any person to physical confinement or restraint; or
- (c) commit any criminal offense; or
- (d) accuse any person of an offense; or
- (e) expose any person to hatred, contempt, or ridicule; or
- (f) take action as a public official against anyone or anything or withhold official action, or cause such action or withholding.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-5-203 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 12-6.

Commission Comment

Intimidation requires a specific purpose to cause another to perform "or to omit" the performance of any act (such as testifying), and the threat must be "com-

municated" with that purpose. It is also required that the act threatened, if performed, would be "without lawful authority." The section anticipates, therefore, that the accused is apprehended and prosecuted for intimidation before the harm threatened is performed. If the substantive harm occurs, the accused is subject to prosecution and punishment for the

more serious offense, or both intimidation and such offense. This section is all inclusive and includes public officials acting without authority.

The maximum penalty is relatively harsh, but since there is no minimum sentence the judge is able to fix the penalty to suit the crime.

DECISIONS UNDER FORMER LAW

Instructions to Jury

The giving of an instruction defining the word "extortion" in the language of former section 94-1602 was not objectionable, in an action to recover money paid under duress, it not being error to give instructions containing abstract statements of statutory law where the facts are few and simple. *Edquest v. Tripp & Dragstedt Co.*, 93 M 446, 19 P 2d 637.

Threat To Discharge Worker

The right of an employee to work is not property, and therefore a complaint charging a foreman with extorting money from an employee by a threat to discharge him did not charge the crime of extortion under former section 94-1602. In *re McCabe*, 29 M 28, 73 P 1106.

Part Three

Kidnaping

94-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed five hundred dollars (\$500), or be imprisoned in the county jail for any term not to exceed six (6) months or both.

History: En. 94-5-301 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section is intended to deal with the problem of false imprisonment; however, unlawful restraint is a more accurate name

for the offense which embodies restraining another without authority of law. The principal distinctions between this section and the old code provision of R. C. M. 1947, section 94-3576 are the inclusion of the requirements of knowledge and purpose, and the substantial reduction in penalty.

DECISIONS UNDER FORMER LAW

Civil Liability

False imprisonment was treated as a tort and also as a crime under former section 94-3576, the definition being the same in either case. The liability of a wrongdoer did not depend primarily upon his mental attitude. *Kroeger v. Passmore*, 36 M 504, 93 P 805.

Former section 94-3576 which defined the crime of false imprisonment, defined also the civil wrong resulting from it; therefore, in order to make out a case for damages, the plaintiff had to allege a violation of his personal liberty, and that such violation was without legal justification. *Slifer v. Yorath*, 52 M 129, 155 P 1113.

Official Restraint

Warden could not be held liable for failure to allow good behavior time to con-

vict and thus detaining him unlawfully when the prison board had not awarded the good behavior time. *Stephens v. Conley*, 48 M 352, 138 P 189.

Where, after an officer obtained the custody of another by a privileged arrest, he failed to use due diligence in taking him promptly before a proper court or magistrate, his misconduct made him liable to the person arrested only for such harm as was caused thereby but not for the arrest or for keeping him in custody prior to such misconduct; false imprisonment as defined by former section 94-3576 did not exist until the moment the imprisonment became unlawful. *Cline v. Tait*, 113 M 475, 129 P 2d 89.

In an action for false imprisonment brought by plaintiff against a sheriff and the surety on his official bond based on

unnecessary delay in taking plaintiff before a magistrate, it was necessary that the plaintiff prove that a magistrate was available on the particular day when the false imprisonment allegedly occurred. *Rounds v. Bucher*, 137 M 39, 349 P 2d 1026, 98 ALR 2d 962.

Release of Civil Claim

Where plaintiff compromised an action against the sheriff and his surety for false imprisonment and executed a release of defendants captioned "release in full of

all claims" and reciting that plaintiff accepted said sum as "complete compensation for all injuries sustained in connection with" the matters set forth in the complaint, a subsequent false imprisonment action against the county attorney was properly dismissed on motion for judgment on the pleadings, nothing appearing in the release reserving plaintiff's right to proceed against the county attorney. *Beedle v. Carolan*, 115 M 587, 148 P 2d 559.

94-5-302. Kidnaping. (1) A person commits the offense of kidnaping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation, or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnaping shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-5-302 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

Both the Illinois Criminal Code and the Model Penal Code kidnaping provisions are marked by great detail in defining the offense. Under the Illinois Code, kidnaping may be either simple (misdemeanor or felony) or aggravated (felony), and there is a third offense entitled unlawful restraint (misdemeanor). The Model Penal Code contemplates offenses called kidnaping, felonious restraint, false imprisonment, and interference with custody. A detailed statement of the circumstances required for each offense is given in each provision.

It is possible that such a detailed treatment of the kidnaping provisions will lead

to difficulties in interpreting ambiguous conduct and relating it to the stated offenses. Too often conduct which seems criminal escapes the precise language of the statutes. The commission concluded that a carte blanche approach whereby the offenses of kidnaping and unlawful restraint are given broad definition was warranted. Any leniency justified by the character of such ambiguous conduct could best be considered and given effect in the sentence imposed. If this approach is utilized the range of punishment that may be imposed should be substantial.

It should be noted that subsection (1) conforms with current Montana law, that a showing of actual physical violence or threat of personal injury are not required to prove the force necessary to establish the crime. (*State v. Walker*, 139 M 276, 362 P 2d 548, 550.)

DECISIONS UNDER FORMER LAW

Force or Threat

Defendant was guilty of confining prison guard secretly against his will under former section 94-2602 where the evidence showed that defendant, an inmate of the state prison, walked behind prison guard with a knife, after another inmate had disarmed the guard, until the inmates had placed the guard in isolation. *State v. Frodsham*, 139 M 222, 362 P 2d 413.

On the trial of defendant charged with kidnaping a prison guard contrary to former section 94-2602 a showing of actual physical violence or threat of personal injury was not required to prove the force necessary to establish the crime. *State v. Walker*, 139 M 276, 362 P 2d 548.

Pleadings

An information under former section 94-2602 was sufficient if it contained a statement of facts constituting the offense charged in ordinary and concise language so as to enable a person of common understanding to know what was intended. *State v. Randall*, 137 M 534, 353 P 2d 1054, 100 ALR 2d 171.

Information charging kidnaping "with intent" to confine clearly charged violation of former section 94-2602, rather than former section 94-2601, which required that defendant "attempt or cause" confinement. *State v. Corliss*, 150 M 40, 430 P 2d 632, cert. den. 390 US 961, 88 S Ct 1063.

Secret Confinement

The requirement of secrecy in former section 94-2602 was met where prison inmates took guards as hostages and held them at an undisclosed place within the prison. *State v. Randall*, 137 M 534, 353 P 2d 1054, 100 ALR 2d 171.

Willfulness

Where defendant was charged with kidnaping a prison guard under former section 94-2602, it was a question for the jury whether defendant was acting under duress or coercion because of threats made to him by other convicts participating in riot. *State v. Walker*, 139 M 276, 362 P 2d 548.

94-5-303. Aggravated kidnaping. (1) A person commits the offense of aggravated kidnaping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation, or by using or threatening to use physical force, with any of the following purposes:

- (a) to hold for ransom or reward, or as a shield or hostage; or
- (b) to facilitate commission of any felony or flight thereafter; or
- (c) to inflict bodily injury on or to terrorize the victim or another; or
- (d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) A person convicted of the offense of aggravated kidnaping shall be punished by death as provided in section 94-5-304, or be imprisoned in the state prison for any term not to exceed one hundred (100) years unless he has voluntarily released the victim, alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-5-303 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 212.1.

Commission Comment

This section is derived almost exclusively from the Model Penal Code, section 212.1, and is generally intended to answer the question of when the crime of kidnaping should be punished by death. The section proposes to maximize the kidnaper's incentive to return the victim alive, by making the capital penalty apply only when the victim is not released,

alive, in a safe place and not suffering from serious bodily injury.

Multiple Counts

It was not necessary to charge defendant with ten separate counts of kidnaping, specifying weapons used or the related felony, where a single count based on subdivision (1)(b) specifying the felonies of aggravated assault and sexual intercourse without consent, and a single count based on the statutory language of subdivision (1)(c) would fulfill the notice requirement of the statute. *State ex rel. McKenzie v. District Court of Ninth Judicial Dist.*, — M —, 525 P 2d 1211.

94-5-304. Sentence of death for aggravated kidnaping. A court shall impose the sentence of death following conviction of aggravated kidnaping if it finds that the victim is dead as the result of the criminal conduct.

History: En. 94-5-304 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 126, L. 1974.

Source: New.

Commission Comment

This section specifies the general provision of death for aggravated kidnaping as set forth in section 94-5-303. It is parallel to and consistent with the death penalty for deliberate homicide (section 94-5-105). The initial comments of that section are applicable to this section.

Amendments

The 1974 amendment deleted "unless there are mitigating circumstances" from the end of the section.

Effective Date

Section 2 of Ch. 126, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

94-5-305. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed ten (10) years. A person does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to trial.

History: En. 94-5-305 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

Violation of lawful custody, especially of children, requires special legislation notwithstanding its similarity in some respects to kidnaping. The interest protected is not freedom from physical danger or terrorization by abduction, since that is adequately covered by sections 94-5-302 and 94-5-303, but rather the maintenance of parental custody against all unlawful interruption, even when the child is a willing, undeceived participant in the attack on the parental interest. The prob-

lem is further distinguishable from kidnaping by the fact that the offender will often be a parent or other person favorably disposed toward the child. One should be especially cautious in providing penal sanctions applicable to estranged parents struggling over the custody of their children, since such situations are better regulated by custody orders enforced through contempt proceedings. Despite these distinctive aspects of child-stealing and the existence of special provisions on the subject in most jurisdictions, the problem is frequently covered by kidnaping and the penalties and exceptions do not adequately reflect the special circumstances.

Part Four

Robbery

94-5-401. Robbery. (1) A person commits the offense of robbery if, in the course of committing a theft, he:

- (a) inflicts bodily injury upon another; or
- (b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or
- (c) commits or threatens immediately to commit any felony, other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft, or in flight after the attempt or commission.

History: En. 94-5-401 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 222.1.

Commission Comment

With some verbal changes the Montana draft on robbery parallels that of the Model Penal Code, section 222.1.

Common-law robbery was theft of property from the person or in the presence of the victim by force or by putting him in fear either of immediate bodily injury or of certain other grievous harms. The

above draft does not explicitly include the traditional basis for classifying robbery as taking property from the person or in the presence of a person, but approaches the crime as one of immediate danger to the person and relies on the condition of violence or threatened violence to distinguish the crime from ordinary theft. The gist of the offense is taking by force or threat of force.

The above provision would apply where property was not taken from the person or from his presence. For example, an offender might threaten to shoot the victim in order to compel him to telephone

directions for the disposition of property located elsewhere. Further, it is immaterial whether property is or is not obtained. This seems compatible with the theory of treating robbery as an offense against the person rather than against property. Hence, a completed robbery may occur even though the crime is in-

terrupted before the accused obtained the goods, or if the victim had no property to hand over. The section includes armed robbery. Further, subdivision (1)(b) encompasses the use of a toy or unloaded gun, since such a device can be employed to threaten serious injury and may be effective to create fear of such injury.

DECISIONS UNDER FORMER LAW

Conspiracy Evidence

Where defendant, while attempting to open the safe on a train, robbed a mail clerk, evidence as to details of the attempted train robbery and a conspiracy therefor was admissible to show the entire transaction in prosecution for robbery of clerk under former section 94-4301. *State v. Howard*, 30 M 518, 77 P 50.

Felonious Taking

An instruction defining robbery under former section 94-4301, which omitted to state "the taking" must be felonious, was prejudicially erroneous. *State v. Oliver*, 20 M 318, 50 P 1018. See also *State v. Rodgers*, 21 M 143, 53 P 97.

Evidence that victim had a certain amount of money in a wallet in his vest pocket nine days before an assault and that after the assault his vest was torn and the wallet and money were gone supported inference that the money was taken after the assault, thus that there was a robbery within the meaning of former section 94-4301. *State v. Olson*, 87 M 389, 287 P 938.

Force or Fear

The taking of personal property from the person or immediate presence of another, without resistance on his part, did not bring the offense within the definition of robbery under former section 94-4301; it was necessary that the element of force or fear be present to constitute the crime. *State v. Paisley*, 36 M 237, 92 P 566.

Since former section 94-4301 did not define the degree of force necessary to constitute the taking of personal property from the person or immediate presence of another, to constitute the crime of robbery, an information charging such offense was not required to allege the degree of force used. *State v. Paisley*, 36 M 237, 92 P 566.

Though the crime of robbery under former section 94-4301 could be accom-

plished only by means of force or fear, proof of an assault without showing that it was resorted to as a means to prevent resistance fell far short of establishing the crime of an attempt to commit robbery. *State v. Hanson*, 49 M 361, 141 P 669.

It is reasonable to presume fear where victim is forced to look down the barrel of a 45-caliber automatic pistol held by a stranger whose purpose is to rob him. *State v. Erickson*, 141 M 118, 375 P 2d 314, 316.

Pleadings

An indictment which charged that the defendant committed the robbery by force and intimidation and by putting the person robbed in fear, was sufficient under former section 94-4301. *State v. Clancy*, 20 M 498, 52 P 267.

An information on a prosecution for robbery under former section 94-4301, which charged that the property was taken by means of force and putting in fear, and that it was taken from the person in possession, and from the immediate presence of a specified person, did not charge more than one offense. *State v. Howard*, 30 M 518, 77 P 50.

Punishment

Fifty-year sentence was warranted for defendant who had two previous convictions for burglary in another state. *State v. Paisley*, 36 M 237, 92 P 566.

Since there was no maximum penalty stated in former section 94-4303, it was presumed that person may be incarcerated for lifetime on conviction of robbery. *Petition of Eldiwtw*, 153 M 468, 457 P 2d 909.

In view of maximum punishment of life imprisonment presumably provided by former section 94-4303, former section 94-115 providing five-year maximum for felonies not otherwise punished did not apply, and ten-year sentence was authorized. *Petition of O'Rourke*, 154 M 265, 461 P 2d 1.

Part Five Sexual Crimes

94-5-501. Definitions. (1) In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

(2) As used in sections 94-5-503 and 94-5-505 the term "without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old.

History: En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975.

Amendments

The 1975 amendment designated the former section as subsection (1) and added subsection (2).

Without Consent

An instruction defining lack of consent

to include "consent having been overcome by threats, or putting in fear of his [victim's] safety" was not prejudicial to defendant in a prosecution for deviate sexual conduct without consent, where the threats made all related to the victim's physical well being; it would have been better to charge in the words of the statute. *State v. Ballew*, — M —, 532 P 2d 407.

94-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973.

Source: Derived from Model Penal Code, section 213.4.

Commission Comment

This section is a substantial change from the old law. It carries out the rationale behind section 213.4 of the Model Penal Code. This section deals with acts of sexual aggression which do not involve the element of "penetration" found in R. C. M. 1947, former section 94-4103. The range of activity covered extends from unauthorized fondling of a woman's breasts to homosexual manipulation of a boy's genitals. The old law did not differentiate sexual from other assault, except assault in connection with rape or lewd and lascivious acts upon children. The following considerations favor special treatment of indecent assault within the sexual offense category: (1) The individualized treatment of sexual misconduct with children is consistent with current legislation;

(2) Societal concern with indecent assault focuses on the outrage, disgust or shame engendered in the victim rather than fear of physical injury; and (3) the gist of the offense being a sexual imposition, although of a lesser degree. The important features of this section require an actual touching and leave for separate consideration cases of indecent exposure, etc. Although contact must be with the victim it need not be contact between the offender and the victim. Thus, subjecting another to sexual contact with a third person is covered. It covers situations of nonconsent only.

There is a maximum penalty of twenty years if the victim is under sixteen years and the defendant is three years or more older, covering the situation where sexual contact takes a deviate form in regard to children. The rationale behind heavy punishment of "lewd acts upon children" or statutory rape is victimization of immaturity. To give effect to the victimization rationale, an age differential in favor

of the male is provided. Thus, a youth who had sexual contact with a fifteen-year-old girl would have to be eighteen

years or older before such act is a criminal event.

DECISIONS UNDER FORMER LAW

Constitutionality

The legislature has the power to prohibit the commission of lewd and lascivious acts upon children under certain ages, and former section 94-4106, defining and prescribing punishment for such offense was constitutional. *State v. Kocher*, 112 M 511, 119 P 2d 35; *State v. Jensen*, 153 M 489, 458 P 2d 782.

Age of Defendant

The portion of former section 94-4106 giving an exemption of prosecution to a person under the age of eighteen years was a matter of defense, and negation thereof was not a necessary part of the information. *State v. Davis*, 141 M 197, 376 P 2d 727.

Assault and Attempted Rape Distinguished

Aggressive, indecent, immoral and grossly offensive contact without the consent of the female and with intent to induce her consent to sexual intercourse constituted simple assault but did not constitute attempt to rape in violation of former section 94-4101 where defendant could have accomplished his purpose by force but desisted when the female resisted. *State v. Hennessy*, 73 M 20, 234 P 1094.

Civil Action for Assault

In an action for damages for attempted rape the testimony of plaintiff should be considered in the light of all the attendant circumstances, as should also the question whether her subsequent conduct was the usual and natural conduct of an outraged woman as bearing upon the credibility of her direct testimony, such charges being easily made, often inspired by malice, hidden motives or revenge, and hard to disprove. *Cullen v. Peschel*, 115 M 187, 142 P 2d 559.

Evidence of Other Offenses

In prosecution under former section 94-4106 for lewd and lascivious acts upon the person of a child below the age of sixteen years, committed on or about March 19, 1955, it was improper to permit state to show similar acts on August 4, 1951, and in June 1951 in the state of California because of the remoteness in time. *State v. Nicks*, 134 M 341, 332 P 2d 904, 77 ALR 2d 836.

In prosecution for attempted statutory rape, evidence that defendant could have been charged on a previous occasion and had been warned against association with under-age girls was inadmissible and its prejudice could not be overcome either by warnings to jury or by rebuttal evidence produced by defendant. *State v. Tiedemann*, 139 M 237, 362 P 2d 529, distinguished in 144 M 401, 396 P 2d 821, and in 155 M 119, 467 P 2d 692.

Where defendant was charged with violation of former section 94-4106, testimony of other women concerning similar improper acts committed by defendant on them was admissible, since such testimony showed continuous pattern of behavior on part of defendant. *State v. Jensen*, 153 M 233, 455 P 2d 631.

Intent

Evidence that defendant invited a nine-year-old girl, a stranger to him, to his room, locked the door, asked her to remove her dress and placed his hand on her shoulder as if to unbutton her dress, showed that he had intent to arouse or gratify the passions of himself or the girl, and it was not essential that there be "flesh-to-flesh" contact. *State v. Kocher*, 112 M 511, 119 P 2d 35.

Evidence that defendant, while intoxicated, attempted to induce children to enter his automobile, entered their car and sat with them, trying to get them to shake hands with him, but departed when told to by one of the children, did not prove intent to arouse or gratify passions within the meaning of former section 94-4106, even when bolstered by psychiatric testimony that defendant was a sexual deviate and ought to be confined. *State v. Green*, 143 M 234, 388 P 2d 362.

Punishment

A defendant convicted of a lewd and lascivious act upon a child under former section 94-4106 was properly sentenced to a term of not less than ten years pursuant to the second offense law, on proof that he had previously been convicted of lewd and lascivious acts upon a child. In *re Davis' Petition*, 139 M 622, 365 P 2d 948.

94-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) Evidence of the victim's past sexual conduct with the offender;

(b) Evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

If the defendant proposes, for any purpose, to offer evidence described in (a) or (b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this subsection.

(6) If the issue of failure to make a timely complaint or immediate outcry is raised, the jury shall be informed that such fact, standing alone, may not bar conviction.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975.

Source: Derived from Model Penal Code, section 213.0.

Commission Comment

The section provides no age limit on the male offender but section 94-2-109 and the juvenile law R. C. M. 1947, Title 10, provide jurisdictional limitations. Deviate forms of sexual intercourse are included by definition (see section 94-2-101(56)) since these forms of sexual aggression are equally abhorrent. Sexual relations between married people are excluded. The section imposes an increased penalty if bodily injury occurs or there is a three or more year variation between the age of an under sixteen-year-old victim and the actor.

Compiler's Notes

Section 94-5-503 was amended twice in 1975, once by Ch. 2 and once by Ch. 129.

Since Ch. 129 incorporated the changes made by Ch. 2, the section is set forth as amended by Ch. 129.

Amendments

Chapter 2, Laws of 1975, substituted "A person" and "a person not his spouse" in subsection (1) for "A male person" and "a female not his spouse."

Chapter 129, Laws of 1975, made the same substitutions made by chapter 2; and added subsections (5) and (6).

Continuous Resistance Unnecessary

Law did not require that a woman put her life into jeopardy by continuous resistance to rape; testimony of victim that she submitted only after being told that her struggles would be futile because defendant would not let her go until he had finished was sufficient to show lack of consent. *State v. Glidden*, — M —, 529 P 2d 1384.

DECISIONS UNDER FORMER LAW

Constitutionality

This section is not unconstitutionally vague and ambiguous since the terms used are all defined in the Criminal Code. *State v. Ballew*, — M —, 532 P 2d 407.

Corroboration of Confession

Where defendant in a prosecution for statutory rape under former section 94-4101 virtually enticed prosecutrix from her home and placed her in a house of

unsavory reputation, kept her there for three or four days and did not disclose her whereabouts to her father who was searching for her, and in addition made a confession, these circumstances and a statement by a third party that parties had intercourse were sufficient to prove the corpus delicti and sustain conviction, despite the fact that prosecutrix, third party and defendant all repudiated prior statements to officers that the parties had intercourse. *State v. Traufer*, 109 M 275, 97 P 2d 336.

Federal Law as to Indians

In the prosecution of an Indian under former section 94-4101, for the crime of rape committed upon a thirteen-year-old female Indian on a reservation, an information which failed to charge that force had been employed or that consent of the victim was lacking failed to state an offense under the federal law which adopted the state law definition of rape. *United States v. Rider*, 282 F 2d 476.

Force and Violence

Evidence was insufficient to justify a conviction for rape charged to have been accomplished by violence and force, where it appeared that the prosecuting witness failed to make any outcry or to offer any physical resistance which required force to overcome, within the meaning of subdivision 3 of former section 94-4101. *State v. Needy*, 43 M 442, 117 P 102.

An information for rape under former section 94-4101, alleging that the act was committed by force and against the will and consent of the female, was sufficient, under subdivisions 3 and 4 of that section, and authorized proof that the act was committed under the circumstances provided for in either subdivision. *State v. Morrison*, 46 M 84, 125 P 649.

To warrant conviction for an attempt to commit rape by force under former section 94-4101, the evidence had to be sufficient to establish beyond a reasonable doubt that the defendant assaulted the prosecutrix with the intention to accomplish his purpose at all events and notwithstanding any resistance on her part; acquittal was required absent intent in the mind of the assailant to overcome by force all resistance which might be offered. *State v. Hennessy*, 73 M 20, 234 P 1094.

Evidence adduced in a prosecution for an attempted rape by force under former section 94-4104 was insufficient to sustain a verdict of guilty, it presenting a case of urgent solicitation rather than of an intention by the use of force to overcome the resistance of the prosecutrix. *State v. Hennessy*, 73 M 20, 234 P 1094.

Under former section 94-4101, an information charging rape accomplished by

violence and force, and against the will and consent of the prosecuting witness, was sufficient and warranted proof either of resistance overcome by violence or superior force, or of threats of a nature to excuse nonresistance. *State v. Whitmore*, 94 M 119, 21 P 2d 58.

Under former section 94-4101, there was no variance between an information charging the commission of rape by violence and force, and the evidence of the prosecutrix that she was rendered helpless by a blow in the face which stunned her prior to the commission of the offense, even though she was unconscious or semi-conscious during its commission; such proof of her condition as a reason for nonresistance bringing the case within subdivision 3 of that section, i.e., rape, where the resistance of the female is overcome by violence or force. *State v. Whitmore*, 94 M 119, 21 P 2d 58.

Indictment and Information

In an indictment for rape under former section 94-4101, it was not necessary to allege that the female injured was not the wife of the defendant. *State v. Williams*, 9 M 179, 23 P 335; *State v. Morrison*, 46 M 84, 125 P 649.

Instructions to Jury

Instruction in rape case prosecuted under former section 94-4101, which intimated to jury that impact of guilty verdict could be lessened by court's imposition of light sentence was prejudicial to defendant, since punishment should not be a concern to jury in determining defendant's guilt or innocence. *State v. Zuidema*, 157 M 367, 485 P 2d 952, overruling *State v. Metcalf*, 153 M 369, 457 P 2d 453.

Juvenile Defendant

Since former section 94-4101 was repealed by implication by Laws of 1943, Ch. 227 (10-601 et seq.), and the amendments thereof, in so far as it was in conflict with the substance and intent thereof, the district criminal court was prohibited from trying child under the age of sixteen years charged with rape. He was solely under the exclusive jurisdiction of the juvenile court. *State ex rel. Dahl v. District Court*, 134 M 395, 333 P 2d 495.

Penetration

It was not error to instruct the jury in the language of former section 94-4103 that any penetration, however slight, was sufficient, or to add that "Proof of emission is not necessary." *State v. Bouldin*, 153 M 276, 456 P 2d 830.

Threats

Physical resistance by prosecutrix was not necessary element of rape where evi-

dence supported conviction under subdivision 4 of former section 94-4101, which simply required that there be threats of immediate and great bodily harm, accompanied by apparent power of execution. *State v. Metcalf*, 153 M 369, 457 P 2d 453, overruled on other grounds in 157 M 367, 373, 485 P 2d 952.

Unconscious Victim

The term "unconscious" as used in subdivision 5 of former section 94-4101, defining the crime of rape, did not have reference to the loss of physical or mental faculties on the part of the female through assault and violence; the subdivision referred only to a situation where the victim was unconscious of the nature of the act. *State v. Whitmore*, 94 M 119, 21 P 2d 58.

Under-Age Victim

Under former section 94-4101, the question of force was immaterial where the prosecuting witness was under the statutory age of consent. *State v. Bowser*, 21 M 133, 53 P 179.

Under former section 94-4101, where an

information in a rape case charged that defendant had carnal knowledge of a female under the statutory age of consent, violently, and against her will, and there was ample evidence that the female was under that age, it was not incumbent on the state to prove also that she resisted defendant's assault, and that he violently overcame her resistance, even though it had been so alleged. *State v. Mahoney*, 24 M 281, 61 P 647.

Under former section 94-4101, any man who accomplished an act of sexual intercourse with a female under the age of eighteen years, when such female was not his wife, was guilty of the crime of statutory rape. The corpus delicti was sufficiently proved by the testimony of the prosecutrix that she had sexual intercourse with the accused at the time and place set forth in the information. *State v. Reid*, 127 M 552, 267 P 2d 986.

Prima facie case of statutory rape was established by victim's testimony that defendant had sexual intercourse with her, corroborated by medical finding of sperm in vagina. *State v. Anderson*, 156 M 122, 476 P 2d 780.

94-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) A person convicted of the offense of indecent exposure shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 213.5.

Commission Comment

The special case of genital exposure for sexual gratification has been placed in this

article along with other types of sexual aggression. It is not meant to include "indecent" brevity of attire, but rather "lewdness" which requires an awareness of the likelihood of affronting observers and is often a threat or prelude to overt sexual aggression.

94-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations, or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The section includes both homosexuality and bestiality. There has been a reduction in the penalty because it was felt that the

severe penalty was more a product of revulsion than the social harm in fact committed. The Model Penal Code recommends that bestiality be made a misdemeanor. The Illinois Code contains no provision on the subject. Subsection (3) increases the penalty if the human-victim participant in the bestiality or homosexuality acts without consent. To appreciate the meaning and scope of "without consent" see sections 94-2-101(68) and 94-5-506(3).

Instructions to Jury

Where there was no specific reason to distrust the testimony of the complaining witness, it was not reversible error in a prosecution under this section to refuse an instruction that the witness' testimony should be viewed with caution since a sex offense is easily charged and difficult to disprove. *State v. Ballew*, — M —, 532 P 2d 407.

DECISIONS UNDER FORMER LAW

Corroboration of Victim

Evidence that defendant and a teenage boy spent a great deal of time together, that defendant had made many gifts to the boy, that the boy had been nervous and lost his appetite, that defendant and the boy were in separate beds in the same room when arrested, and that boy had relaxed sphincter muscles of the anus, was insufficient to corroborate boy's testimony as to perpetration of crime against nature on him. *State v. Keekonen*, 107 M 253, 84 P 2d 341.

Corroborating evidence to the testimony of the victim showing only that victim, a young boy, slept with the defendant and stayed overnight at defendant's house on several occasions, was insufficient to sus-

tain conviction of violation of former section 94-4118, as it showed nothing more than opportunity to commit the crime. *State v. Gangner*, 130 M 533, 305 P 2d 338.

Penetration

Ambiguous testimony by eight-year-old victim as to whether anus was penetrated, uncorroborated by medical examination, was insufficient to support conviction of completed infamous crime against nature. *State v. Shambo*, 133 M 305, 322 P 2d 657.

The infamous crime against nature prohibited by former section 94-4118 could be committed by penetration of the mouth. *State v. Dietz*, 135 M 496, 343 P 2d 539.

94-5-506. Provisions generally applicable to sexual crimes (94-5-501 to 94-5-505). (1) When criminality depends on the victim being less than sixteen (16) years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than fourteen (14) years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the extension shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (94-5-502 to 94-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant, and the intoxicating substance was voluntarily and knowingly taken.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 213.6.

Commission Comment

This section rejects the concepts of "vir-

tue," "chastity," or "good repute" as possible defenses in sex crimes but does envision cases of precocious fourteen (14) year old girls and even very young prostitutes who might be the "victimizers," rather than the victims.

Subsection (2) precludes a prosecution

for rape where the woman is living with the accused as his wife, regardless of the legal validity of their marital status. Nor is it possible to prosecute where the spouses have been living apart without benefit of a judicial order. There is the possibility of consent in the resumption of

sexual relations coupled with the special danger of fabricated accusations.

Conditions affecting a woman's capacity to "control" herself sexually will not involve criminal liability if her own actions were voluntary in bringing about the result.

DECISIONS UNDER FORMER LAW

Age of Victim

In a prosecution for rape under subdivision 1 of former section 94-4101 (female under the age of eighteen years), it was immaterial that she consented to the act, that defendant was ignorant of

her age or that she misrepresented her age to him, or that she was lacking in chastity, or at the time was an inmate of a house of prostitution, nonage on her part being sufficient to warrant conviction. *State v. Duncan*, 82 M 170, 266 P 400.

Part Six

Offenses Against the Family

94-5-601. Definitions. In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

History: En. 94-5-601 by Sec. 1, Ch. 513, L. 1973.

94-5-602. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received, or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975.

Source: New.

Commission Comment

The prior law reflects the common-law concern for prostitution—i.e. the public nuisance aspects of open solicitation. The requirement that the solicitation be public seems at odds with the modern conception that prostitution, discreetly or indiscreetly carried on, ought to be controlled. Thus section 94-5-603(1)(a) reflects the position that professional prostitution is criminal even if carried on in private. Section 94-5-603(1)(b) adopts the idea that prostitution should be controlled when it mani-

festes itself in public solicitation, which may be an annoyance to passers by and an outrage to the moral sensibilities of a large part of the public. The penalty is a misdemeanor, the same as prior law.

Amendments

The 1975 amendment incorporated the text of former subdivision (1)(a) into the body of subsection (1); added "whether such compensation is received or to be received, or paid or to be paid" to subsection (1); deleted former subdivision (1)(b) which read: "loiters in or within view of any public place for the purpose of being hired to engage in sexual intercourse"; and made minor changes in style.

94-5-603. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business; or

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate; or

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute; or

(d) solicits a person to patronize a prostitute; or

(e) procures a prostitute for a patron; or

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution, or procures or pays for transportation with that purpose; or

(g) leases or otherwise permits a place controlled by the offender alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part, upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) Compels another to engage in or promote prostitution.

(b) Promotes prostitution of a child under the age of eighteen (18) years, whether or not he is aware of the child's age.

(c) Promotes the prostitution of one's spouse, child, ward or any person for whose care, protection or support he is responsible.

(3) A person convicted of promoting prostitution shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(4) Evidence. On the issue whether a place is a house of prostitution the following, in addition to all other admissible evidence, shall be admissible:

(a) Its general repute; the repute of the persons who reside in or frequent the place; or the frequency, timing and duration of visits by nonresidents.

(b) Testimony of a person against his spouse shall be admissible under this section.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975.

Source: New.

Commission Comment

This section creates a comprehensive single offense of promoting prostitution, embracing many different acts of collaboration with or exploiting of prostitutes found in prior law as separate offenses. Many undesirable consequences under prior law were possible: accumulation of sentences based on separate convictions for what are really parts of a single criminal transaction, e.g., procuring, transporting, receiving money; unfair double trials, as where a county attorney proceeds for transporting after losing on a procuring charge.

In general the subsidiary clauses of section 94-5-603 are based on prior legislation. Subsection (1)(a) covers R. C. M. 1947, sections 94-3607 and 94-3608. Subsection (1)(b) covers R. C. M. 1947, sections 94-4110, 94-4111, 94-4112, 94-4113 and 94-4114. Subsection (1)(c) also covers the circumstances embraced in R. C. M. 1947, sections 94-4110, 94-4112, and 94-4115. Subsection (1)(d) covers R. C. M. 1947, section 94-3610; subsection (1)(e) covers R. C. M. 1947, section 94-4114. Subsection (1)(f) deals with transportation that promotes prostitution. At the level of interstate and foreign commerce, the federal Mann Act strikes at the organized business of interstate prostitution. This subsection covers local transporting and

makes it clear that the transporter must have the purpose to promote, in addition to the knowledge that his action facilitates prostitution. Subsection (1)(g) adopts the principle of prior law, R. C. M. 1947, section 94-3608 making the landlord criminally responsible if he knowingly lets premises for the purpose of prostitution. This subsection is not meant to impose a duty of inquiry or of criminal liability for negligent failure to discover the illicit use of leased premises. Subsection (1)(h) is based on R. C. M. 1947, section 94-4117 which provides for punishment of those who derive their livelihood from the prostitution of others, excepting minor children and dependent adults. Promoting prostitution is a misdemeanor, but a more severe penalty is provided if aggravating circumstances are present.

Special rules of evidence to provide for

admission of evidence of repute of alleged houses of prostitution, as well as incriminating testimony against a spouse, are necessary to prove the offense. Abrogation of the common-law privilege of the defendant to bar his spouse from testifying against him has special utility in prosecuting pimps who are not infrequently married to the prostitute.

Amendments

The 1975 amendment substituted "one's spouse" for "his wife" in subdivision (2)(c).

Effective Date

Section 3 of Ch. 2, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved February 6, 1975.

DECISIONS UNDER FORMER LAW

Inducement

An attempt to induce a female to take up her residence in another state for immoral purposes, which was complete before transportation had commenced, was punishable under former section 94-4110 and not under the Mann Act. *State v. Reed*, 53 M 292, 163 P 477.

Interstate Transportation

Former section 94-4109 prohibiting the importation or exportation of females for immoral purposes was wholly void since Congress had legislated upon the matter in the Mann Act (U. S. C. Tit. 18, §§ 2421-2424). *Ex parte Anderson*, 125 M 331, 238 P 2d 910.

Procuring

Evidence that defendant obtained and paid rent on prostitute's apartment, forced her to stay there, procured for her and took all money was sufficient for conviction under former section 94-4110. *State v. Crockett*, 148 M 402, 421 P 2d 722.

Receiving Prostitute's Earnings

Where defendant had given his note for money he obtained from a prostitute, he was not guilty of a violation of former

section 94-4116, prohibiting the accepting of money from such persons without consideration, even though he later refused to pay the note placed in a bank for collection. *State v. Jones*, 51 M 390, 153 P 282.

Knowingly and without consideration taking or receiving from a prostitute any of her earnings was a separate and distinct offense under former section 94-4116 from that of living upon her earnings. *State v. Kanakaris*, 54 M 180, 169 P 42.

Defendant with independent means who was in no way dependent on a prostitute was not guilty of living on her earnings in violation of former section 94-4117 even though he received money from her. *State v. Kanakaris*, 54 M 180, 169 P 42.

Provision in former section 94-4116 making the acceptance of money from a prostitute presumptive evidence of lack of consideration was valid. *State v. Pippi*, 59 M 116, 195 P 556.

Evidence that defendant cashed check given to prostitute by male brought to her by defendant who coerced her to prostitute for him was sufficient to support conviction under former section 94-4114. *State v. Crockett*, 148 M 402, 421 P 2d 722.

94-5-604. Bigamy. (1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead; or

(b) the offender and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the offender to be alive; or

(c) a court has entered a judgment purporting to terminate or annul

any prior disqualifying marriage, and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-5-604 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 230.1.

Commission Comment

This section has a broader coverage than prior law in that it applies to anyone who has "contracted a marriage." It is possible to contract a marriage which is a legal nullity. A man could marry a woman who, unknown to him, is already married to another and could marry again without bothering to divorce the first woman. Or a man could marry successively two women who, by reason of youth or mental defect, are incapable of contracting marriage.

In each case he demonstrates a disposition to plural marriage, unless he comes within the good faith defense of subsection (1)(c). The concept of marriage in this section includes common-law marriage contracted in a jurisdiction that recognizes this form of marriage. Subsection (1)(a) absolves the defendant in a bigamy case

that he believed his spouse to be dead. On policy grounds there is no valid reason to stigmatize or punish remarriage by people who in good faith believe themselves to be widows or widowers.

Subsection (1)(b) creates an exception based on a five-year conclusive presumption of death. Subsections (1)(c) and (d) provide that one who has a reasonable basis for believing himself legally eligible to marry does not commit a criminal offense by a second marriage. Questions of the validity of foreign divorces are so perplexing that lawyers and the courts are often divided on the legal issues. It is well-settled that a single person who marries a divorced person is not liable to punishment if he made a reasonable mistake as to the legal validity of the other's divorce. It seems harsh to subject a defendant, who remarries following an out-of-state divorce, to a criminal bigamy prosecution where a person sophisticated in law might be unsure as to the validity of the foreign divorce. This section is intended to avoid such a result.

DECISIONS UNDER FORMER LAW

Prior Bigamous Marriage

A bigamous marriage, though void for civil purposes under section 48-111, is still valid for criminal purposes until pronounced void by a competent court, and a third marriage without a decree declaring the second marriage void was biga-

mous even though defendant had obtained a divorce from his first wife and even though the second marriage was void from the beginning for civil purposes under section 48-111. *State v. Crosby*, 148 M 307, 420 P 2d 431; *Crosby v. Ellsworth*, 431 F 2d 35.

94-5-605. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any period not to exceed six (6) months, or both.

History: En. 94-5-605 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section also applies to someone

who purports to contract a marriage. Like prior law, this section punishes the knowing participation in a bigamous marriage. The punishment has been reduced to a misdemeanor which should provide sufficient deterrent.

94-5-606. Incest. (1) A person commits the offense of incest if he knowingly marries or cohabits or has sexual intercourse with an ancestor,

a descendant, a brother or sister of the whole or half blood. "Cohabit" means to live together under the representation of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationships of parent and child by adoption.

(2) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section is patterned after the Model Penal Code. The uncle-aunt-nephew-niece cases are excluded from the category of "felonious incest," in view of the severity of the penalty.

The marriage regulations of R. C. M.

1947, section 48-105 circumscribe marriage more strictly than the criminal incest law, but different considerations justify a more limited scope in criminal incest vis a vis a marriage contract. Relations between uncles and under-age nieces would be "sexual intercourse without consent." "Ancestor" and "descendant" include all persons in lineal ascent and descent from one body.

DECISIONS UNDER FORMER LAW

Marital Status of Parties

There was no substantial change in the charge under former section 94-705 where the court allowed the state to amend an information charging defendant with incest by changing "fornication" to "adultery." Whether the defendant was married or unmarried at the time was not a material ingredient of the offense. In either event the defendant was guilty, if the in-

tercourse charged was proved. *State v. Kuntz*, 130 M 126, 295 P 2d 707.

Single Act

A single act of sexual intercourse was sufficient to support a conviction under former section 94-705 and it was not necessary that fornication be open as required under the section making fornication a crime. *Territory v. Corbett*, 3 M 50.

94-5-607. Endangering welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than sixteen (16) years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection or support.

(2) A parent, guardian, or other person commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a youth by:

(a) supplying or encouraging the use of intoxicating substances by a child;

(b) assisting, promoting, or encouraging a child to leave or abandon his place of residence without the consent of his parents or guardian, to enter a place of prostitution, to engage in sexual conduct, or to enter places exclusively for adults.

(3) A person convicted of endangering welfare of children shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of a second offense of endangering welfare of children shall be fined not to exceed one thousand dollars (\$1,000) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

(4) Evidence. On the issue of whether there has been a violation of the duty of care, protection, and support, the following in addition to all other admissible evidence, shall be admissible: cruel treatment, abuse, infliction of unnecessary and cruel punishment, abandonment, neglect, lack

of proper medical care, clothing, shelter and food; evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

History: En. 94-5-607 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 85, L. 1975.

Source: New.

Commission Comment

This section penalizes a limited class of misbehavior by a parent or other person legally responsible for the care and supervision of children. This offense can be committed only by an act or omission in violation of a legal duty. That legal duty may be one which does not itself carry a penal sanction; this section adds the penal sanction when violation of the duty creates a known danger to the child. Although the commission recognizes that prosecution of parents will seldom be a constructive solution to intra-family problems, it seems worthwhile to retain a penal sanction for gross breach of parental

responsibility. Also provision is made that any criminal fine levied against the offender may be used to aid the disadvantaged minor. The age designation is arbitrary but consistent with the other provisions in the code intended to protect children.

Amendments

The 1975 amendment inserted subsection (2); designated former subsections (2) to (4) as (3) to (5); and added the second sentence in subsection (3).

Effective Date

Section 2 of Ch. 85, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 19, 1975.

94-5-608. Nonsupport. (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

- (a) the offender has left the state to avoid the duty of support;
- (b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of aggravated nonsupport shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of person or persons that the defendant has failed to support.

History: En. 94-5-608 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section confines the criminal offense of nonsupport to failure to provide support which the accused knows he is legally obliged to provide. The policy of the former law is retained, that is, the section is designed to compel the defendant to perform his duty rather than make him an object of exemplary punishment.

Exemplary punishment is of doubtful efficacy in complex family situations, where many forces, both social and economic, may combine to excuse the behavior. The fact that nonsupport can be prosecuted lays the basis for intervention by the county attorney, who can thus provide legal aid to indigent families and coerce the accused to support his family. The problem of enforcing support obligations of defendants who leave their families and go to another state has been largely solved by the Uniform Reciprocal Enforcement of

Support Act. However, extraditing the defendant on a felony criminal charge is still possible under the aggravating circumstances of subsection (2).

94-5-609. Unlawful transactions with children. (1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances; or

(b) sells or gives intoxicating substances to a child under the age of majority; or

(c) being a junk dealer, pawnbroker or secondhand dealer he receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed one thousand dollars (\$1,000) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-5-609 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section is merely a partial recodification of a number of statutes on unlawful transactions with children. (See

R. C. M. 1947, sections 94-35-106 to 94-35-106.2, 94-3702 and 69-1902.) Other statutes relating to children were repealed. (See R. C. M. 1947, sections 94-35-138, 94-35-137 and 94-35-208.) The substance of still other statutes relating to children were placed elsewhere in the code.

DECISIONS UNDER FORMER LAW

Entrapment

Entrapment was no defense in a prosecution for selling liquor to a minor even though a public officer gave the minor money and instructed him to buy whiskey, whereupon the minor entered defendant's bar, offered to buy and was sold whiskey, where the officers did not induce the sale by defendant or mislead him as to the minor's age. *State v. Parr*, 129 M 175, 283 P 2d 1086, 55 ALR 2d 1313.

Furnishing Liquor

Evidence that defendant poured drinks containing intoxicating liquor and set them out on a dresser in his hotel room and that a minor picked one up and consumed it supported conviction under former section 94-35-106. *State v. Clark*, 87 M 416, 288 P 186.

Intoxicating Beverage

Information charging defendant with selling intoxicating liquor to minor was sufficient even though it did not specify the kind of liquor furnished. *State v. Baker*, 87 M 295, 286 P 1113.

Information charging sale of intoxicating beverage to minor was sufficient when it described the beverage as "beer," and it

was not necessary to allege the percentage of alcohol. *State v. Winter*, '129 M 207, 285 P 2d 149.

In prosecution for violation of former section 94-35-106, corpus delicti was established by evidence that the defendant poured minor a drink from a bottle marked "Vodka." *State v. Moore*, 138 M 379, 357 P 2d 346.

License

In prosecution for selling intoxicating liquor to a minor, it was immaterial whether defendant was licensed under the alcoholic beverage laws, and amendment of information to insert allegation that defendant was an employee of a licensee was surplusage and not prejudicial to defendant. *State v. Winter*, 129 M 207, 285 P 2d 149.

Misrepresentation of Age

In a prosecution under former section 94-35-106 for furnishing liquor to a minor, misrepresentation of age by the minor was no defense and it was immaterial what precautions defendant took to ascertain the buyer's age. *State v. Paskvan*, 131 M 316, 309 P 2d 1019.

Minor who misrepresented his age to

obtain liquor was guilty of violation of section 4-413, rather than being an accomplice under former section 94-35-106, and it was not necessary to corroborate his testimony as to his own age. *State v. Paskvan*, 131 M 316, 309 P 2d 1019.

Other Transactions

In prosecution for selling liquor to a particular minor, testimony by six other minors as to purchases by them from de-

fendant was admissible under proper instructions to jury. *State v. Gussenhoven*, 116 M 350, 152 P 2d 876.

Punishment

Amount of punishment imposed for selling intoxicating liquor to a minor under former section 94-35-106 was for the legislature and not for review by supreme court. *State v. Gussenhoven*, 116 M 350, 152 P 2d 876.

94-5-610. Unlawful possession of intoxicating substance by children.

(1) A person who has not reached the age of majority commits the offense of possession of intoxicating substance if he knowingly has in his possession an intoxicating substance, except a person who has not reached the age of majority does not commit the offense of possession of an intoxicating substance when in the course of his employment, he bags, carries or transports beer for customers at a grocery store.

(2) A person convicted of the offense of possessing an intoxicating substance shall be fined not to exceed fifty dollars (\$50) or be imprisoned in the county jail for any term not to exceed ten (10) days, or both.

History: En. 94-5-610 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 87, L. 1974.

Source: Substantially the same as Revised Codes of Montana 1947, section 94-35-106.2.

Commission Comment

This section is merely a recodification of the present statute on this subject.

Amendments

The 1974 amendment added the exception at the end of subdivision (1); and made a minor change in punctuation.

94-5-611. (11023) Administering drugs or using instruments with intent to produce miscarriage. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than five years.

History: En. Sec. 41, p. 184, *Bannack Stat.*; amd. Sec. 42, p. 276, *Cod. Stat.* 1871; re-en. Sec. 42, 4th Div. Rev. Stat 1879; re-en. Sec. 42, 4th Div. Comp. Stat. 1887; amd. Sec. 480, Pen. C. 1895; re-en. Sec. 8351, Rev. C. 1907; re-en. Sec. 11023, R. C. M. 1921; Sec. 94-401, R. C. M. 1947; redcs. 94-5-611 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 274.

Constitutionality

During the first trimester of pregnancy, the state must leave the decision whether to seek or perform an abortion to the mother and the medical judgment of her physician; during the second trimester,

or until the child is viable, the state may regulate abortion procedures in ways that are reasonably related to the health of the mother; during the final trimester, the state may regulate abortion and may even prohibit it except when necessary, in the appropriate medical judgment, for the preservation of the mother's life or health. *Roe v. Wade*, 410 US 113, 35 L Ed 2d 147, 93 S Ct 705.

This section (former section 94-401 redesignated as section 94-5-611, with no change in text) is unconstitutional in its entirety by virtue of *Roe v. Wade*, 410 US 113, 35 L Ed 2d 147, 93 S Ct 705; *Doe v. Woodahl*, 360 F Supp 20.

94-5-612. (11024) Submitting to an attempt to produce miscarriage. Every woman who solicits of any person any medicine, drug, or substance

whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

History: En. Sec. 481, Pen. C. 1895; re-en. Sec. 8352, Rev. C. 1907; re-en. Sec. 11024, R. C. M. 1921; Sec. 94-402, R. C. M. 1947; redes. 94-5-612 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 275.

Constitutionality

This section (former section 94-402 redesignated as section 94-5-612, with no change in text) is unconstitutional in its entirety by virtue of *Roe v. Wade*, 410 US 179, 35 L Ed 2d 201, 93 S Ct 739; *Doe v. Woodahl*, 360 F Supp 20.

94-5-613. Short title. This act shall be known and may be cited as the "Montana Abortion Control Act."

History: En. 94-5-613 by Sec. 1, Ch. 284, L. 1974.

Title of Act

An act regulating abortions; providing

for keeping of records of abortions; declaring the right to refuse to participate in abortions; protecting the life of the fetus; providing penalties, and an effective date.

94-5-614. Statement of purpose. The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life.

History: En. 94-5-614 by Sec. 2, Ch. 284, L. 1974.

94-5-615. Definitions. As used in this act:

(1) "Department" means the department of health and environmental sciences.

(2) "Facility" means a hospital, health care facility, physician's office or other place in which an abortion is performed.

(3) "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of such physician in his professional capacity:

(a) The stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus.

(b) The physical and psychological effects of abortion.

(c) Available alternatives to abortion, including childbirth and adoption.

Such informed consent may be evidenced by a written statement in the form prescribed by the department signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided above and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(4) "Abortion" means the performance of, or assistance or participation in the performance of, or submission to, an act or operation intended to terminate a pregnancy without live birth.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

History: En. 94-5-615 by Sec. 3, Ch. 284, L. 1974.

94-5-616. Consent to abortion. (1) No abortion may be performed upon any woman in the absence of informed consent.

(2) No abortion may be performed upon any woman in the absence of:

(a) the written notice to her husband, unless her husband is voluntarily separated from her;

(b) the written notice to a parent, if living, or the custodian or legal guardian of such woman, if she is under eighteen (18) years of age and unmarried.

(3) The above informed consent or consent is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(4) No executive officer, administrative agency or public employee of the state of Montana or of any local governmental body has power to issue any order requiring an abortion or shall coerce any woman to have an abortion, nor shall any person coerce any woman to have an abortion.

(5) Violation of subsection (1), (2) or (4) of this section is a misdemeanor.

(6) The use of the prescribed departmental form of informed consent required by section 3 [94-5-615(3)] shall not be mandatory until July 1, 1974. Prior thereto, a written statement fairly setting forth the content specified by section 3 [94-5-615(3)] shall be in compliance therewith.

History: En. 94-5-616 by Sec. 4, Ch. 284, L. 1974.

94-5-617. Protection of life and health of infant. (1) A person commits the offense of criminal homicide, as defined in sections 94-5-101 through 94-5-105, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion if is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse, or either of them, have agreed in writing in advance of the abortion, or within seventy-two (72) hours thereafter, to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research, or other kind of experimentation except as neces-

sary to protect or preserve the life and health of such premature infant born alive.

(4) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(5) Violation of subsection (3) of this section is a felony.

History: En. 94-5-617 by Sec. 5, Ch. 284, L. 1974.

94-5-618. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) Except by a licensed physician.

(b) After the first three months of pregnancy, except in a hospital licensed by the department.

(c) After viability of the fetus, unless in appropriate medical judgment, the abortion is necessary to preserve the life or health of the mother. An abortion under this subsection (1) (c) may only be performed if:

(i) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him, setting forth in detail the facts upon which he relies in making such judgment; and

(ii) two other licensed physicians have first examined the patient and concurred in writing with such judgment.

The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(2) The timing and procedure used in performing an abortion under subsection (1) (c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in section 94-2-101 (32). The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(3) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(4) Violation of subsections (1) and (2) of this section is a felony. Violation of subsection (3) of this section is a misdemeanor.

History: En. 94-5-618 by Sec. 6, Ch. 284, L. 1974.

94-5-619. Reporting of practice of abortion. (1) Every facility in which an abortion is performed within the state of Montana shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require; including, but not limited to, information on prior pregnancies; the medical procedure employed to administer the abortion; the

gestational age of the fetus; the vital signs of the fetus after abortion, if any; and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this act relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall within thirty (30) days after the abortion file with the department a report upon a form prescribed by the department and certified by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this act shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law; except that statistical data not identifying any individual involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except in so far as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion, and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

(6) The department shall report to the attorney general any apparent violation of this act.

(7) The reports required by this section shall not be mandatory for any abortion performed prior to July 1, 1974.

History: En. 94-5-619 by Sec. 7, Ch. 284,
L. 1974.

94-5-620. Refusal to participate in abortion. (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility, or any personnel or agent or governing board thereof, to any person for damages allegedly arising from such refusal, nor be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility, or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility, or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions." The refusal of any person to advise concerning, perform, assist, or participate in abortion, shall not be a consideration in respect of staff privileges of any hospital or health care facility, nor a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent, or for the loss of any public benefits.

(5) As used in this section, the term "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 94-5-620 by Sec. 8, Ch. 284,
L. 1974.

94-5-621. Other regulations. The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state of Montana resulting directly or indirectly from abortion, subject to the provisions of section 7 [94-5-619(5)] of this act.

History: En. 94-5-621 by Sec. 9, Ch. 284,
L. 1974.

94-5-622. Penalties. (1) A person convicted of criminal homicide under this act is subject to the penalties prescribed by sections 94-5-101 through 94-5-105.

(2) A person convicted of a felony other than criminal homicide under this act is subject to a fine not to exceed one thousand dollars (\$1,000), or imprisonment in the state prison for a term not to exceed five (5) years, or both.

(3) A person convicted of a misdemeanor under this act is subject to a fine not to exceed five hundred dollars (\$500), or imprisonment in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-5-622 by Sec. 10, Ch.
284, L. 1974.

94-5-623. Legislative intent. It is the intent of the legislature to restrict abortion to the extent permissible under decisions of appropriate courts or paramount legislation.

History: En. 94-5-623 by Sec. 11, Ch.
284, L. 1974.

94-5-624. Severability. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all the valid applications that are severable from the invalid applications.

History: En. 94-5-624 by Sec. 12, Ch. 284, L. 1974. vided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

Effective Date

Section 13 of Ch. 284, Laws 1974 pro-

CHAPTER 6

OFFENSES AGAINST PROPERTY

Part 1—Criminal Mischief and Arson

- Section 94-6-101. Definitions.
 94-6-102. Criminal mischief.
 94-6-103. Negligent arson.
 94-6-104. Arson.
 94-6-105. Possession of explosives.

Part 2—Criminal Trespass and Burglary

- 94-6-201. Definitions.
 94-6-202. Criminal trespass to vehicles.
 94-6-203. Criminal trespass to property.
 94-6-204. Burglary.
 94-6-205. Possession of burglary tools.

Part 3—Theft and Related Offenses

- 94-6-301. Definitions.
 94-6-302. Theft.
 94-6-303. Theft of lost or mislaid property.
 94-6-304. Theft of labor or services or use of property.
 94-6-304.1. Obtaining communication services with intent to defraud.
 94-6-305. Unauthorized use of motor vehicles.
 94-6-306. Offender's interest in the property.
 94-6-307. Deceptive practices.
 94-6-308. Deceptive business practices.
 94-6-308.1. Chain distributor schemes.
 94-6-309. Issuing a bad check.
 94-6-310. Forgery.
 94-6-311. Obscuring the identity of a machine.
 94-6-312. Illegal branding or altering or obscuring a brand.
 94-6-313. Defrauding creditors.
 94-6-314. Effect of criminal possession of stolen property.

Part 1

Criminal Mischief and Arson

94-6-101. Definitions. In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

History: En. 94-6-101 by Sec. 1, Ch. 513, L. 1973.

94-6-102. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages or destroys any property of another or public property without consent; or

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use; or

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any inclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of the offense of criminal mischief shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of one hundred fifty dollars (\$150), or injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-6-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 88, L. 1975.

Source: New.

Commission Comment

This section defines the behavior that is punishable because it harms or threatens to harm property. In so far as the section deals with purposeful, unjustified actual harm to property, it corresponds to the traditional "malicious mischief" offense. This section would include killing, maiming, or poisoning livestock. The section is more comprehensive and requires proof of a different mental state than prior law.

Subsection (2) classifies some criminal mischief a felony by providing imprison-

ment up to ten (10) years in the state prison for causing pecuniary loss in excess of one hundred fifty (\$150) dollars. Under the old malicious mischief section (R. C. M. 1947, section 94-3301) the amount of loss required for a felony conviction was only fifty (\$50) dollars and there was a mandatory minimum penalty of one year. This section has changed the minimum amount necessary for a felony conviction to conform with changing values.

Amendments

The 1975 amendment inserted "or public property" after "property of another" in subdivisions (1)(a) and (b).

DECISIONS UNDER FORMER LAW

Burning of Jail

Prisoner who started fire in jail portion of the courthouse which fire spread and consumed the entire building was properly charged with second degree arson rather than with destroying a jail. *Petition of Weiss*, — M —, 511 P 2d 1319.

Lesser Included Offenses

The malicious destruction of property was not included in the crime of willful and malicious burning of property, as defined by former section 94-3303. *State v. Sieff*, 54 M 165, 168 P 524.

Maiming of Animal

To constitute the act of "maiming" an animal, a felony within the meaning of former section 94-1208, permanent injury must have been inflicted. *State v. Benson*, 91 M 21, 5 P 2d 223.

Evidence that defendant fired a load of shot into horse at a distance of ten feet and at a point nearest the heart supported an inference of intent to kill or maim and a conviction for attempt to maim under former section 94-1208. *State v. Benson*, 91 M 21, 5 P 2d 223.

94-6-103. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another and thereby negligently:

(a) places another person in danger of death or bodily injury; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender places another person in danger of death or bodily injury, he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-6-103 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

Section 94-6-103 differs substantially from the current Model Arson Law. First, it eliminates the grading of arson into degrees by reference to the class of property destroyed. Second, it prohibits negligent uses of fire or explosives which endanger persons or property unaccompanied by injury or damage, and third, it includes the burning of one's own property in circumstances where there is a high risk that the fire will spread to property of others

or where the burning of lesser forms of property is accomplished in close proximity to occupied structures.

The provisions of subsection (1) are to be construed as pertaining to affirmative knowing and purposeful acts and are not intended to include omissions to report, control or combat a fire which has placed a person in danger of bodily injury or death, or an occupied structure in danger of damage or destruction. If a person starts a fire negligently or fails to control a fire thus placing persons or property in danger the act is made punishable by R. C. M. 1947, section 28-115.

94-6-104. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure which is property of another without consent; or

(b) places another person in danger of death or bodily injury.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

History: En. 94-6-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 261, L. 1975.

Source: New.

Commission Comment

This section, together with section 94-6-103, Negligent Arson, is intended to completely replace the old Model Arson Law which classifies offenses in an illogical and arbitrary fashion. The burning of an empty, isolated dwelling could result in a twenty (20) year sentence under R. C. M. 1947, section 94-502, while setting fire to a crowded church or theater or jail could yield only a maximum sentence of ten (10) years under R. C. M. 1947, sec-

tion 94-503. Moreover, it makes little sense to treat the burning of miscellaneous personal property, whether out of malice or to defraud insurers a special category of crime apart from the risks associated from burning. To destroy a valuable painting or manuscript by burning it in a hearth or furnace cannot be distinguished criminologically from any other method of destruction.

Amendments

The 1975 amendment inserted "which is property" after "structure" in subdivision (1)(a).

DECISIONS UNDER FORMER LAW

Lesser Included Offense

The malicious destruction of property was not included in the crime of willful

and malicious burning of property, as defined by former section 94-3303. *State v. Sieff*, 54 M 165, 168 P 524.

94-6-105. Possession of explosives. (1) A person commits the offense of possession of explosives if he possesses, manufactures or transports any explosive compound or timing or detonating device for use with any explosive compound or incendiary device, and:

(a) has the purpose to use such explosive or device to commit any offense; or

(b) knows that another has the purpose to use such explosive or device to commit any offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

History: En. 94-6-105 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 20-2.

Commission Comment

This section is intended to consolidate R. C. M. 1947, section 94-3304, "Destruc-

tion of buildings by explosive—punishment," and the various applicable provisions included in Title 69, chapter 19, Explosives, Regulation of Manufacture, Storage and Sale. The act is prohibited only when it is done with the intent to commit an offense or with knowledge that another intends to use the explosives to commit an offense.

Part 2

Criminal Trespass and Burglary

94-6-201. Definitions. "Enter or remain unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action.

History: En. 94-6-201 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The core of the common-law concept of burglary was breaking and entering a dwelling house at night with intent to commit a felony therein. The scope of the offense has enlarged until under prevailing law, the offense may be committed by entry alone, in daytime as well as by night, in any building, structure, or "vehicle."

In this code "occupied structure" is narrowly defined to include buildings where people are living or working and where intrusions are most alarming and dangerous. For example, the definition does not include barns, or derelict and abandoned buildings unsuited for human occupancy. In the case of a mine or ship, for example, occupancy would have to be proved. "Entering or remaining unlawfully" is a concept which takes a middle ground between prevailing law requiring breaking and its complete elimination in some modern legislation.

DECISIONS UNDER FORMER LAW

Uninclosed Range Land

The proviso to former section 94-35-237, requiring the marking of boundaries as a prerequisite to criminal liability for driving herds onto private land, did not change the rule relating to civil liability that a

herder must determine the boundaries of private land at his peril. *Herrin v. Sieben*, 46 M 226, 127 P 323, overruled on other grounds in 131 M 494, 501, 311 P 2d 982, 986.

94-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-6-202 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 21-2.

Commission Comment

The section is intended to cover a

troublesome area of criminal activity which is easily identifiable and well-known to the police. The section covers only trespass to vehicles, aircraft or watercraft. If the trespass involves damage to a vehicle, the separate offense of criminal mischief (94-6-102) is committed.

94-6-203. Criminal trespass to property. (1) A person commits the offense of criminal trespass to property if he knowingly:

- (a) enters or remains unlawfully in an occupied structure; or
- (b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-6-203 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 21-3.

Commission Comment

This section covers criminal trespass to land without regard to the nature, use or location of the land. Criminal trespass is committed only if the offender, immediately prior to entry, receives oral or writ-

ten notice that such entry is forbidden, or he remains upon the land after being notified to leave. The section differs substantially from R. C. M. 1947, section 94-3308, "Malicious injuries to freehold," in that no specific act causing damage need be alleged, only the unlawful presence of the offender. Should damage occur during the trespass, the offender could be prosecuted under section 94-6-102, Criminal Mischief.

DECISIONS UNDER FORMER LAW

Hunting on Posted Land

A person who hunted on inclosed land without the consent of one entitled to its possession was a trespasser, and where the

land was posted warning against hunting, was in violation of former section 94-3309. *Herrin v. Sutherland*, 74 M 587, 241 P 328.

94-6-204. Burglary. (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit a felony therein, and

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense, or in immediate flight thereafter he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed ten (10) years. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed forty (40) years.

History: En. 94-6-204 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 260, L. 1975.

Source: New.

Commission Comment

The definition of a burglarious entry, i.e., "unprivileged entry" takes a middle

ground between the common-law requirement of "breaking" and the complete elimination of that requirement in some modern statutes. The basic concept of "breaking" seems to be an unlawful intrusion, or as defined in section 94-6-201, "entering or remaining unlawfully." This definition is meant to exclude from burglary the servant who enters his employer's house meaning to steal silver; the shoplifter who enters a store during business hours to steal from the counter; the fireman who forms the intent, as he breaks down the door of a burning house, to steal some of the householder's belongings and similar acts in which the defendant is lawfully on the premises.

Where breaking is not required there

DECISIONS UNDER FORMER LAW

Breaking

Former section 94-901 did not require a breaking of the enclosure but only an unlawful entry, and the word "break" in an information was surplusage. *State v. Dixon*, 80 M 181, 260 P 138.

Building

A sheep wagon covered, enclosed by four walls and used as a dwelling by a sheep herder was a "building" within the meaning of former section 94-901, even though it was on wheels rather than affixed to the ground, and it could be the object of a burglary. *State v. Ebel*, 92 M 413, 15 P 2d 233.

Burning of Jail

Prisoner who started fire in jail portion of the courthouse which fire spread and consumed the entire building was properly charged with second degree arson rather than with destroying a jail. *Petition of Weiss*, — M —, 511 P 2d 1319.

Corpus Delicti

Proof that furnishings in a billiard hall were in order when it was locked up at night, that the furnishings were in disorder when the hall was unlocked the next morning, and that some articles were missing, established the corpus delicti of burglary under former section 94-901 even without proof of the means by which entry was effected, and defendant's confession became admissible. *State v. Dixon*, 80 M 181, 260 P 138.

Degrees of Burglary

On prosecution of an information under former section 94-901 which did not state the degree of the offense or whether it was committed by day or night, where neither the verdict nor the judgment of conviction specified the degree of the offense but the judgment included a sentence that was

has been a tendency to hold that guilt may be established by proof that the proscribed intent was secretly entertained in the mind of the entrant although apart from this secret intent the entrance at that time and place would have been authorized. For example, in *People v. Brittain*, 142 Cal 8, 75 P 314, it was held one could be convicted of burglary for entering a store with larcenous intent. The commission rejects this view and approves of the decision of *State v. Starkweather*, 89 M 381, 297 P 497 as a more practical result.

Amendments

The 1975 amendment inserted "unlawfully" after "remains" in subsection (2).

authorized only for first degree burglary, it was presumed that the judgment was supported by evidence that the offense was committed at night. *State v. Mish*, 36 M 168, 92 P 459; *State ex rel. Williams v. Henry*, 119 M 271, 174 P 2d 220.

Description of Property

In information for burglary under former section 94-901, charging entry with intent to commit larceny, then describing the property taken, the description was surplusage and there was no charge of the actual commission of larceny. *State v. Board*, 135 M 139, 337 P 2d 924.

Evidence of Other Offenses

Evidence of defendant's possession of a comb taken in a previous burglary of the same structure was inadmissible since mere possession did not prove defendant's guilt of the previous burglary beyond a reasonable doubt, and its admission in a prosecution under former section 94-901 for a subsequent burglary was prejudicial. *State v. Ebel*, 92 M 413, 15 P 2d 233.

Evidence of Purchase of Valuable Goods

Defendant's watch and ring together with purchase receipt for same were properly admitted in evidence for purpose of showing a substantial change in defendant's pecuniary circumstances subsequent to the burglary, and their admission raised no inference that the items had been stolen. *State v. Pepperling*, — M —, 533 P 2d 283.

Felony

Since former section 94-903 provided for imprisonment in the state prison for burglary, it was a felony, and dismissal of the first information did not bar a subsequent prosecution on a second information. *State v. McGowan*, 113 M 591, 131 P 2d 262.

Forcible Entry

Defendant who exceeded invitation given as a business invitee and stayed in pharmacy after business was closed became a trespasser; subsequent theft of goods from pharmacy constituted a burglary. *State v. Watkins*, — M —, 518 P 2d 259.

Identification of Money

Inability of witness to identify his money positively did not render the money inadmissible, where the money stolen consisted of uncirculated bills and rolls of Indian head pennies, and the money in defendant's possession corresponded in a close and peculiar way. *State v. Pepperling*, — M —, 533 P 2d 283.

Information and Indictment

Allowing prosecution to amend charges in information from first degree burglary to burglary on motion presented on day of trial was not error since elements of crime and proof required for conviction remained the same. *State v. Stewart*, — M —, 507 P 2d 1050.

Intent

Instruction charging jury to acquit if it found that defendant entered building with lawful intent was properly refused in the absence of evidence that defendant may have had that intent. *State v. Larson*, 75 M 274, 243 P 566.

It was not necessary to a conviction under former section 94-401 that express intent to commit larceny or any felony be proved; rather, it may be manifested by all the circumstances. *State v. Board*, 135 M 139, 337 P 2d 924.

Entry to tavern after closing hours with unauthorized duplicate key, and defendant's subsequent apprehension outside tavern with checks and currency identified as having come from tavern safe, showed felonious intent. *State v. Harris*, 159 M 425, 498 P 2d 1222.

Defendant's intent to commit larceny from van was established by evidence that a pair of bolt cutters with a padlock in its jaws was found in defendant's car which was backed up to side door of van, a group of tools had been stacked near door of van in anticipation of removal, defendant had been seen leaving the van, and there was no justification for defendant to have entered van. *State v. Austad*, — M —, 533 P 2d 1069.

Possession of Stolen Property

Proof of the corpus delicti, together with evidence that the property taken was found in defendant's possession and that defendant made inconsistent and partially incriminating statements as to the manner in which the property came into his pos-

session, supported a conviction under former section 94-901. *State v. Kinghorn*, 109 M 22, 93 P 2d 964.

It was permissible for court to instruct, in prosecution for burglary under former section 94-901, that one found in possession of property from burglarized premises is bound to explain possession in order to remove the effect of possession as a circumstance pointing to guilt. *State v. Branch*, 155 M 22, 465 P 2d 821.

Probable Cause for Information

Evidence that accused was arrested in the company of one in whose car stolen property was found several hours later was not sufficient proof to justify filing of an information for burglary under former section 94-901. *State ex rel. Wilson v. District Court*, 159 M 439, 498 P 2d 1217.

Proof of Entry

Evidence that a tire and chains were taken from an automobile inside a barn, that a letter addressed to defendant was found next to automobile, and that part of the stolen property was found on defendant's premises, supported conviction under former section 94-901 for burglary of barn. *State v. Larson*, 75 M 274, 243 P 566.

Sufficiency of the Evidence

Evidence that defendant was flushed from hiding at 9:20 p.m., several hours after dark, that only preliminary work toward opening a safe had been completed and that a flashlight was among tools left behind at scene of burglary sufficiently established "nighttime requirement" to support conviction of first degree burglary. *State v. Solis*, — M —, 516 P 2d 1157.

Evidence that defendants were driving car described by eyewitness as having been involved in a burglary, that defendant had a fresh cut on his arm and glass fragments in his shoes which matched broken glass at rear entrance of burglarized premises and that a footprint inside the premises matched the defendant's shoe was sufficient to support conviction of burglary. *State v. Black*, — M —, 516 P 2d 1163.

Search of defendant's premises which revealed a pistol matching the make, model and serial number of pistol reported stolen, a narcotics label with the pharmacy owner's initials, which labels were kept on the narcotics in the safe at the drug-store, and an attache case containing numerous drugs along with watches and cigarette lighters constituted sufficient evidence to sustain conviction of burglary of pharmacy. *State v. Watkins*, — M —, 518 P 2d 259.

Although mere possession of recently stolen property did not raise a presumption of guilt, where it was accompanied by other incriminating circumstances such as familiarity with the burglarized premises, unexplained possession of large sum of money, and fact that defendant suddenly left the state the day after the crime had been committed, there was sufficient evidence to support the conviction. *State v. Pepperling*, — M —, 533 P 2d 283.

Time of Entry

Under former sections 94-901 and 94-902, it was unnecessary to allege whether the entry was made at night or during the day, but it was for the jury to determine the degree of the offense. *State v. Copenhagen*, 35 M 342, 89 P 61; *State v. Mish*, 36 M 168, 92 P 459; *State v. Summers*, 107 M 34, 79 P 2d 560; *State ex rel. Williams v. Henry*, 119 M 271, 174 P 2d 220; *State ex rel. Wilson v. District Court*, 159 M 439, 498 P 2d 1217.

When, under former sections 94-901 and 94-902, the information specifically charged burglary in the nighttime but the prosecution failed to prove night as the time of entry, acquittal was required. *State v. Copenhagen*, 35 M 342, 89 P 61; *State v. Fitzpatrick*, 125 M 448, 239 P 2d 529, distinguished in 135 M 139, 144, 337 P 2d 924, 927.

Instruction as to second degree burglary under former section 94-902 was not required where all the evidence indicated entry during the night and there was not a scintilla of evidence indicating entry during the daytime. *State v. Dixon*, 80 M 181, 260 P 138.

Tools as Evidence

Tools found near the site of an attempted burglary were not admissible as

evidence unless properly connected with the crime or the defendants, and it was error to permit a police officer to testify as to how the tools might be used in effecting entry. *State v. Filacchione*, 136 M 238, 347 P 2d 1000.

Unlawful Entry

Burglary under former section 94-901 required an entry that was a trespass, and the fact that intent to commit an unlawful act accompanied an entry that was otherwise lawful did not make it unlawful so as to support a conviction for burglary. *State v. Mish*, 36 M 168, 92 P 459; *State v. Starkweather*, 89 M 381, 297 P 497.

Value of Property

Since entry to commit petit larceny was within the scope of former section 94-901, it was unnecessary in a burglary prosecution to allege or prove value of the property it was intended to steal. *State v. Mish*, 36 M 168, 92 P 459.

Where property taken was described in testimony, jury could infer that it had some value, thus that its taking would be larceny and that unlawful entry with that intent was burglary under former section 94-901. *State v. Dixon*, 80 M 181, 260 P 138.

Variance between Pleadings and Proof

Entry and intent were the gravamen of the offense under former section 94-901, and it was immaterial that the information did not state the location of the building with exact particularity, that the property stolen actually belonged to a different person than named in the information, or that the proof related to a date eight days later than that specified in the information. *State v. Rogers*, 31 M 1, 77 P 293.

94-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or any explosive, suitable for breaking into an occupied structure or vehicle or any depository designed for the safe-keeping of property, or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-6-205 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 19-2.

Commission Comment

This section does not represent a substantial change from the old Montana

law, R. C. M. 1947, section 94-908, which prohibited possession of burglary tools. The main purpose for the change is, first, to reconstruct the language of the provision to conform with that of the other burglary statutes in this chapter, and second, to eliminate the concept of altering a tool or instrument for the purpose of committing a felony or misdemeanor,

since possession of an altered instrument or tool with the intent to use it to commit a crime, cannot logically be distinguished

from possession of an unaltered burglari-ous tool. The new provision does not alter the penalty for the crime.

Part 3

Theft and Related Offenses

94-6-301. Definitions. In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

History: En. 94-6-301 by Sec. 1, Ch. 513, L. 1973.

94-6-302. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner, and:

- (a) has the purpose of depriving the owner of the property; or
- (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
- (c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner, and:

- (a) has the purpose of depriving the owner of the property; or
- (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
- (c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another, and:

- (a) has the purpose of depriving the owner of the property; or
- (b) purposely or knowingly uses, conceals or abandons the property in such manner as to deprive the owner of the property; or
- (c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(4) A person convicted of the offense of theft of property not exceeding one hundred fifty dollars (\$150) in value shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of the offense of theft of property exceeding one hundred fifty dollars (\$150) in value or theft of any commonly domesticated hooved animal shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-6-302 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 16-1.

Commission Comment

The first sentence of the section requires that the act must be done "knowingly" or "purposely." As is true in all except absolute liability offenses the act and the mental state must coincide. Therefore, the

offense of theft is committed when any one of the acts coincides with any one of the mental states. After extended and exhaustive study and consideration by the commission, matching various combinations of the subsections to cover every type of conduct proscribed by the old law, and extending such matching to conduct covered by statutes in other states, it is believed that this section will cover any conceivable form of theft.

Subsection (1) is the most comprehensive and should include most if not all forms of theft.

Subdivision (1) (a) covers the traditional mental state required in theft. This mental state is the one which will be present in the great majority of cases. However, special situations may exist where it is difficult to prove a specific purpose to permanently deprive, but the offender's handling or disposition of the property is such that it directly results in a permanent deprivation to the owner, or would have so resulted but for the fortuitous

intervention of circumstances of recovery. Subdivision (1) (c) is not intended to convert all "joy-riding" escapades into theft unless the abandonment of the vehicle is under such circumstances that the owner probably would be deprived permanently of the use or benefit of his car.

While the method by which unauthorized control is obtained or exerted is immaterial in subsection (1), and probably, in conjunction with one of the subdivisions (a), (b), or (c), would cover all forms of theft the commission felt that such an approach might be too concise, and might create problems of application, in view of the large body of statutory material and the large number of offenses it is intended to replace. Therefore, subsections (2) and (3) were added, to cover the specific offenses of theft by threat or deceit and receipt of stolen property, although the commission intends that all forms of theft could be charged and proved under subsection (1).

DECISIONS UNDER FORMER LAW

Constitutionality

Former section 94-2721, which described the offense of receiving stolen property, was not unconstitutional in delegating to prosecuting attorney discretion to charge either misdemeanor or felony since the defendant had to be charged with a felony and it was within the sound discretion of the court, after conviction, to determine punishment. *Petition of Gibson*, 153 M 454, 457 P 2d 767.

Former section 94-2721 dealing with receipt of stolen property was not unconstitutional as a denial of equal protection on theory it gave state the discretion to charge accused with either a felony or a misdemeanor under the same set of facts since prosecutor did not in fact have such discretion. *State v. Tritz*, — M —, 522 P 2d 603.

Agency

Defendant who was sole owner of corporate collection agency which contracted to collect debts owed to corporate clients was an agent of the other corporations and was properly charged under subdivision 2 of former section 94-2701, when he did not pay over agreed portions of debts collected. *State v. Holdren*, 143 M 103, 387 P 2d 446.

Attempts

Attempt to obtain money by false representations was complete when the representation was made and money solicited even though the representation was not believed and defendant did not actually receive any money. *State v. Phillips*, 36 M 112, 92 P 299.

Bailment

An indictment charging the defendant with larceny as bailee under former section 94-2701 had to contain an averment of the bailment, but the particulars of the bailment need not be averred. *State v. Brown*, 38 M 309, 312, 99 P 954.

Where money was paid to defendant with understanding that he was to use the money for a particular purpose and to repay it by a certain date, defendant was a debtor rather than a bailee and his use of the money for other purposes and his failure to repay did not constitute larceny under former section 94-2701. *State v. Karri*, 51 M 157, 149 P 956.

Where purchaser of automobile gave check to a dealer in amount of purchase price from an out-of-state seller with understanding that the money would be forwarded to the seller, the dealer receiving the money was a bailee rather than a debtor and his failure to forward the money was larceny by bailee under former section 94-2701. *State v. Ahl*, 140 M 305, 371 P 2d 7.

Continuous Series of Thefts

Where the evidence showed that defendant had a single purpose in the theft of numerous items over a period of time from the department store where she worked, and that the thefts must have occurred almost daily over a continuous period, the value of the items stolen could be aggregated to support a charge of grand larceny. *In re Jones*, 46 M 122, 126 P 929.

Information charging city water registrar with embezzlement of water receipts over a period of time in numerous sepa-

rate transactions did not charge more than one offense and was not duplicitous; state could charge one act of embezzlement when defendant failed to account at the end of his term even though a city ordinance required him to account daily. *State v. Kurth*, 105 M 260, 72 P 2d 687.

Corporate Stock

Corporate officer who, without authority and with intent to deprive the corporation of its interest, issued a stock certificate in his own name, was guilty of larceny of the corporate shares under former section 94-2701. *State v. Letterman*, 88 M 244, 292 P 717.

Stock broker who received payment in full from a customer for a cash purchase but failed to order out stock in customer's name, using the stock instead to bolster its margin account with its correspondent, was guilty of larceny by bailee, at least where broker's account with correspondent did not include enough stock to meet demands of all its cash customers who were entitled to have the stock ordered out. *State v. Lake*, 99 M 128, 43 P 2d 627.

Credit Extended

Act of bank officer in debiting dishonored draft to account of a customer rather than to his own account, thus concealing an overdraft in his own account, though a violation of the banking laws, was not larceny in violation of former section 94-2715 since no money was taken and the liability of the bank to its customer was not actually changed. *State v. Rarey*, 72 M 270, 233 P 615.

Deception

Sending of telegram requesting money and signing of name of recipient's brother constituted a representation that the sender was the recipient's brother and was sufficient to support conviction for attempt to obtain money under false pretenses even though the sender used his own name, which was the same as the brother's. *State v. Phillips*, 36 M 112, 92 P 299.

In prosecution under former section 94-1806 for bunco or confidence game, it was not necessary to prove the falsity of every one of the pretenses making up an elaborate scheme to gain the victim's confidence. *State v. Moran*, 56 M 94, 182 P 110.

Evidence of representations of fact made to others than the complaining witness should not have been admitted, and reversal of conviction was required where these were the only false representations of fact proved. *State v. Bratton*, 56 M 563, 186 P 327.

Corporate officer could not be convicted for receiving money under false

pretenses on the basis of payment of money to the corporation on the strength of misrepresentation of a sales agent of the corporation in the absence of evidence of a conspiracy or that the officer authorized or ratified the agent's misrepresentations. *State v. Woolsey*, 80 M 141, 259 P 826.

Conviction for obtaining property under false pretenses under former section 94-1805 did not require that the misrepresentations be such as would have deceived a person of ordinary caution and prudence; it was enough if they actually deceived the victim. *State v. Foot*, 100 M 33, 48 P 2d 1113.

Under former section 94-1805, information did not have to allege the very words of the pretenses or whether they were spoken or written. *State v. Foot*, 100 M 33, 48 P 2d 1113.

Defendant who induced the complaining witness to give him a valuable ring by saying that he had an oil well in Louisiana from which he received eight hundred dollars a month income and that he would cut her in for two hundred dollars of that income, should have been prosecuted under former section 94-1805 for obtaining money or property by false pretenses, rather than under former section 94-1806 for confidence game, where jury could assume that defendant's statements were false since the complaining witness received neither the first two hundred dollars nor any other payment. *State v. Allen*, 128 M 306, 275 P 2d 200.

Degrees of Larceny

It was not necessary under former section 94-2701 to allege the degree of larceny, but that was for the jury to determine. *State v. Wiley*, 53 M 383, 164 P 84.

Use of term "feloniously" in justice court complaint charging defendant with offense of obtaining money by false pretenses was not reversible error where complaint specifically stated that offense charged was misdemeanor. *Petition of Brown*, 150 M 483, 436 P 2d 693.

Description of Property

Information describing the property stolen as "five Ford wire wheels and tires" was sufficiently descriptive. *State v. Diamond*, 82 M 110, 265 P 5.

Disposition of Stolen Property

Evidence that stolen horse had been found out of state was admissible as a link in the chain of evidence relating to a scheme in which defendant participated to ship horses under false bills of sale. *State v. Akers*, 106 M 43, 74 P 2d 1138.

Entrapment

There was not such entrapment as to invalidate a conviction where defendant

approached sheep owner's employee with scheme to carry away sheep and employee co-operated with his employer's consent. *State v. Snider*, 111 M 310, 111 P 2d 1047.

Fiduciary

A guardian who had given ample security to account for all funds coming into his hands and who was personally able to raise the amount thereof on demand, who temporarily employed guardianship funds to repay a loan under a misapprehension that he had a right to do so, thus technically appropriating them to his own use, could not nevertheless be adjudged guilty of larceny under former section 94-2715, especially where, at the settlement of the estate, he fully accounted for all moneys paid over to him as guardian. *Smith v. Smith*, 45 M 535, 125 P 987.

Bank which had received payment on government bond subscription and had purchased bond in its own name held the legal title to the bond as trustee for the subscriber, rather than as bailee, until the bond should be registered in the subscriber's name, and improper use of the bond as collateral on a loan was not larceny within the definition of former section 94-2701. *State v. Wallin*, 60 M 332, 199 P 285.

Secretary-treasurer of a corporation who, under a contract to sell treasury stock on a commission to be paid only when cash for the stock had been received, made fictitious sales, forged notes given in payment, manipulated the books so as to show him entitled to commissions and drew checks against the corporation's account for such commissions although not earned, committed larceny or embezzlement within the meaning of former section 94-2701, and his acts were covered by surety company's bond insuring against larceny or embezzlement. *Montana Auto Finance Corp. v. Federal Surety Co.*, 85 M 149, 278 P 116.

Importation of Stolen Property

Under former section 94-2714, permitting prosecution for bringing stolen property into the state, the form of the accusation was intended to be the same as if the theft had occurred wholly within the state and the place of the theft was a matter of evidence. *State v. Willette*, 46 M 326, 127 P 1013, overruled on other grounds in *State v. Greeno*, 135 M 580, 592, 342 P 2d 1052.

Indians

State district court was without jurisdiction to convict an Indian of larceny which occurred on Indian territory since under section 1153, Title 18, U. S. Code, such an offense is within the exclusive jurisdiction of the United States. *State v. Pepion*, 125 M 13, 230 P 2d 961.

Intent

It was reversible error to omit from a jury instruction under former section 94-2701 the word "feloniously" or other language requiring a finding that the defendant had evil intent. *State v. Rechnitz*, 20 M 488, 52 P 264; *State v. Allen*, 34 M 403, 87 P 177; *State v. Peterson*, 36 M 109, 92 P 302.

Use of the word "feloniously" in an information sufficiently charged evil intent and it was not necessary to include an independent allegation as to intent. *State v. Allen*, 34 M 403, 87 P 177.

Instruction to jury requiring a finding that defendant had an intent to steal did not sufficiently state the requirement of a felonious or criminal intent. *State v. Peterson*, 36 M 109, 92 P 302.

Sheep herder did not, by receiving stolen sheep into his care without protest, incur criminal liability for receiving stolen property or become an accomplice to the theft, where he had no criminal intent and he quit his job and reported the incident to the sheriff at the first opportunity, so it was not necessary to corroborate his testimony. *State v. McComas*, 85 M 428, 278 P 993.

Delay in paying over state funds, with result that money was taken from defendant in an armed robbery, would not support conviction under subdivision 2 of former section 94-2701 without a showing of intent to deprive the state of its money permanently. *State v. McGuire*, 107 M 341, 88 P 2d 35.

Conviction for larceny under former section 94-2701 required proof of specific intent; it was error to give an instruction that "when an unlawful act is shown to have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent. The law also presumes that a person intends the ordinary consequences of any voluntary act committed by him." *State v. Garney*, 122 M 491, 207 P 2d 506, distinguished in 135 M 139, 147, 337 P 2d 924, 929.

In prosecution for receiving stolen cow hides, evidence as to knowledge from brands on the hides was rebutted by evidence that when defendant purchased the hides they were so frozen that they could not be examined for brands, so that there was insufficient evidence to support conviction. *State v. Gilbert*, 126 M 171, 246 P 2d 814, overruled on other grounds in 156 M 456, 461, 481 P 2d 689.

In prosecution of county surveyor under former section 94-1805 for obtaining extra fees to which he was not entitled by presenting to the county a claim under another name, testimony that a state examining officer advised defendant to

handle the matter in this manner was admissible to show good faith and absence of the requisite criminal intent. *State v. Hale*, 126 M 326, 249 P 2d 495.

Requisite intent to deprive owner of property permanently was not shown where proceeds of sale of complainants' property were received by defendant's corporation and credited to running account with complainants even though defendant delayed in settling and eventually became insolvent, resulting in loss to complainants. *State v. Smith*, 135 M 18, 334 P 2d 1099.

Lesser Included Offenses

In prosecution for obtaining money under false pretenses under former section 94-1805, defendant was not entitled to instructions on lesser and included offenses in former section 90-620 on sale of packaged commodities or in former section 94-1904 on full weight in sale of certain commodities, since both of those sections required a sale and section 94-1805 did not. *State v. Lagerquist*, 152 M 21, 445 P 2d 910.

Livestock

Subdivision 3 of former section 94-2704, declaring the theft of a heifer grand larceny regardless of value, referred to live animals only, but where defendants were caught carrying away carcasses of heifers which had been previously killed, dressed and hidden, circumstantial evidence could be used to show that defendants had previously killed the heifers. *State v. Keeland*, 39 M 506, 104 P 513, distinguished in 138 M 362, 357 P 2d 19.

Since, under former section 94-2704, theft of a calf was grand larceny regardless of value, it was not necessary for the jury to make a finding as to value in such a case. *State v. Ingersoll*, 88 M 126, 292 P 250.

Defendant who dressed a stolen cow and assisted the killers in disposing of it could be convicted of grand larceny under subdivision 3 of former section 94-2704, regardless of value, even though defendant did not know of the theft until the cow was already dead. *State v. Guay*, 138 M 362, 357 P 2d 19.

Subdivision 3 of former section 94-2704 made theft of each head of livestock a separate offense, and there was no prejudice in dividing information into five counts, each alleging theft of different cattle where there were differences in the manner of proving the thefts and differences in ownership. *State v. Johnson*, 149 M 173, 424 P 2d 728.

Obtaining Control

Evidence that defendant made false representations and exchanged bank draft

in amount of \$800 for victim's car when defendant had only \$300 in bank was sufficient to sustain conviction for obtaining property by false pretenses under former section 94-1805, where defendant obtained possession even though victim never transferred title to defendant. *State v. Love*, 151 M 190, 440 P 2d 275.

Under former section 94-1805, money received in form of check payable to defendant's wife was money received by defendant in light of evidence that family was living together, that money was used for household support of family and that defendant's wife acted in secretarial capacity in defendant's business operations; fact that defendant did not receive check made out to him personally did mean that element of crime of obtaining money by false pretenses had not been established. *State v. Lagerquist*, 152 M 21, 445 P 2d 910.

Other Offenses

In prosecution of county officer under former section 94-1805 for obtaining money under false pretenses in collecting illegal fees by presenting a claim under the name of another party for work which was within his duties as county surveyor, it was prejudicial error for the court to admit evidence of another claim submitted by the county surveyor which offense was not charged in the information. *State v. Hale*, 126 M 326, 249 P 2d 495.

Overlapping Statutes

Act which constituted violation of weights and measures statute and another statute relating to sale of specific commodities, both of which were misdemeanors, still could be punished as a felony when it constituted obtaining money under false pretenses under former section 94-1805; the state had the discretion to prosecute under any of the statutes. *State v. Lagerquist*, 152 M 21, 445 P 2d 910.

Fact that defendant charged with obtaining money by false pretenses under former section 94-1805 might instead have been charged with a misdemeanor under former section 94-2702, the bad-check statute, did not prevent his conviction under section 94-1805; a person may have been guilty of violating more than one section by the same act. *State v. Evans*, 153 M 303, 456 P 2d 842.

Ownership of Property

Where information for receiving stolen property in violation of former section 94-2721 alleged ownership of the property jointly by three persons but the evidence showed ownership of particular items by the three named persons individually, there was a fatal variance between allegations and proof. *State v. Moxley*, 41

M 402, 110 P 83, distinguished in 146 M 188, 202, 405 P 2d 642.

Particular ownership of property is not of the essence of the crime of larceny and allegations of ownership are descriptive only, so that even though the information alleged larceny of partnership property, it was not necessary to make technical proof of a partnership. *State v. Grimsley*, 96 M 327, 30 P 2d 85.

Allegations of ownership are descriptive only and, in the case of livestock, may be proved other than by recorded brands; unrecorded brands served as descriptive of the animal. *State v. Akers*, 106 M 43, 74 P 2d 1128.

Instruction that if the jury should find that a cow allegedly stolen was the property of the prosecuting witness, and "if there is no evidence of ownership in any other person" they could conclude that the ownership remained in him, was not open to objection that it assumed that there was no other evidence as to ownership, the court, by the quoted words, having expressly recognized the possibility of evidence that ownership was in another who sold to defendant. *State v. Rossell*, 113 M 457, 462, 127 P 2d 379.

It was not essential that an information for obtaining property under false pretenses under former section 94-1805 contain an allegation of ownership; lawful possession was all that was necessary and the section did not require that money or property belong to the person defrauded. *State v. Hanks*, 116 M 399, 153 P 2d 220.

In prosecution under former section 94-2721 on information alleging receipt of a stolen freezer the property of a county, proof of ownership by the county was required and where the purchase was unlawful, the county never owned the freezer so there was a failure of proof. *State v. Bourdeau*, 126 M 266, 246 P 2d 1037.

Information against agent of a distributor for larceny of money belonging both to the distributor and a manufacturer was not required to set out with particularity the amount belonging to each. *State v. Fairburn*, 135 M 449, 340 P 2d 157.

In prosecution on information alleging taking from a named owner, there was no fatal variance in proof that the property was taken from the possession of a lessee of the named owner. *State v. Rindal*, 146 M 64, 404 P 2d 327.

Information alleging receipt of stolen property whose ownership was unknown was sufficient where the property was described with sufficient particularity to apprise the defendant of the crime charged and to protect him from double jeopardy. *State v. Peters*, 146 M 188, 405 P 2d 642.

Receiving Stolen Property

In a prosecution for larceny under former section 94-2701, where jury could have found on the evidence that defendant, though he received stolen property, was not a party to the original theft, defendant was entitled to an instruction distinguishing between the offenses and directing acquittal on the larceny charge if defendant was not a party to the original theft. *State v. Rechnitz*, 20 M 488, 52 P 264.

Where two persons conspired, one to steal property and the other to receive the property, the thief was an accomplice to the offense of receiving stolen property and his testimony had to be corroborated for conviction of his coconspirator. *State v. Keithley*, 83 M 177, 271 P 449.

State courts had jurisdiction of charge of receiving stolen property even though the property belonged to the federal government so that receiving it was a violation of section 101, Title 18, U.S. Code and was also triable by the federal courts. *Ex parte Groom*, 87 M 377, 287 P 638.

One who after the crime of larceny was completed, being present, aided and abetted others in receiving the stolen property, with knowledge that it was stolen and either for his own gain or with intent to prevent the owner from again possessing the property, was a principal in the distinct crime of receiving stolen property and was properly prosecuted as such. *State v. Huffman*, 89 M 194, 296 P 789.

In a prosecution for receiving stolen property under former section 94-2721, a distinct statutory offense, knowledge on the part of the defendant that property was stolen when he received it was essential for conviction. *State v. Keays*, 97 M 404, 34 P 2d 855.

An accessory before the fact of theft could still be guilty of receiving the property and it was optional with the state to prosecute the offender for either. *State v. Webber*, 112 M 284, 116 P 2d 679.

In the absence of a conspiracy, the thief is not generally an accomplice to the crime of receiving stolen property, so his testimony does not require corroboration. *State v. Mercer*, 114 M 142, 133 P 2d 358.

Where defendant's first knowledge as to particular stolen property was received after the property had already been stolen, he was not made an accomplice to the theft by his act of buying the property, and the fact that defendant may have purchased other stolen merchandise from the same thief previously did not constitute an offer to buy such merchandise in the future so as to make him an accomplice, especially where the thief had

sold stolen merchandise to others in the past, so the thief's testimony in a prosecution for receiving stolen property did not require corroboration. *State v. Mercer*, 114 M 142, 133 P 2d 358.

Under former section 94-2721, state was not required to prove theft by someone other than defendant to establish defendant as receiver of stolen property. *State v. Watkins*, 156 M 456, 481 P 2d 689, overruling *State v. Gilbert*, 126 M 171, 246 P 2d 814.

Value of Property

Where three different persons all paid money to defendant at the same time for similar purposes, and defendant appropriated the money at the same time without carrying out the purposes, defendant could be informed against for a single act of larceny and the amounts could be combined to charge him with grand larceny. *State v. Mjelde*, 29 M 490, 75 P 87.

In prosecution under former section 94-2721 for receiving stolen property, value of the property made no difference in the penalty and an allegation of value in the information was surplusage, so that it was necessary on trial only to prove some value, not the amount alleged. *State v. Moxley*, 41 M 402, 110 P 83.

Value of numerous items stolen over a period of time by employee of a department store could be aggregated to support a charge of grand larceny where the evidence showed that defendant had a single purpose in the thefts and that they must have occurred almost daily over a

continuous period. In re *Jones*, 46 M 122, 126 P 929.

Evidence that property stolen had some substantial value supported conviction for petit larceny. *State v. Dimond*, 82 M 110, 265 P 5.

Variance of Proof

Where the information charged theft of corporate stock by misappropriation by a bailee or agent, but the evidence, including endorsement of the certificate by the owner and subscription to stock of a new corporation, showed that the crime, if any, was obtaining property by false pretenses, there was a fatal variance between the charge and the proof. *State v. Lund*, 93 M 169, 18 P 2d 603, distinguished in 146 M 64, 71, 404 P 2d 327, 331.

Where, in prosecution of a city water registrar for embezzling funds received by him for the city, the state filed a bill of particulars listing 214 items of receipts not accounted for, the state could still introduce evidence of other amounts received during the period as a part of the proof that the total amount reported was short of the total amount received. *State v. Kurth*, 105 M 260, 72 P 2d 687.

On prosecution of information charging larceny by taking of property, evidence that defendant secreted the property was admissible to show criminal intent in the taking even though secreting was a separate offense under subdivision 1 of former section 94-2701. *State v. Rindal*, 146 M 64, 404 P 2d 327.

94-6-303. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

- (a) knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner; and
- (b) fails to take reasonable measures to restore the property to the owner; and
- (c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a period not to exceed six (6) months.

History: En. 94-6-303 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Illinois Criminal Code, Chapter 38, section 16-2.

Commission Comment

Subsection (a) provides for the case in which the owner is known or there is

a "clue" to his identity. The "clue" provision is designed to eliminate the distinction between lost property and property which has merely been mislaid based on the assertion that in all "mislaid" property cases there is a clue to ownership. Subsection (b) requires only that reasonable measures to restore the property be

taken. Subsection (c) specifies the traditional mental state in theft, i.e., to deprive permanently. The three subsections must coincide before the offense is committed.

DECISIONS UNDER FORMER LAW

Attempt to Restore

Where ranch hand changed brand on range livestock and rancher, when he learned of it, attempted to find true

owner and make amends but was arrested before he could do so, rancher was not guilty of larceny. *State v. McClain*, 76 M 351, 246 P 956.

94-6-304. Theft of labor or services or use of property. (1) A person commits the offense of theft when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-6-304 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 16-3.

Commission Comment

This section is a slight variation of the traditional requirement of theft found in section 94-6-302 which requires permanent deprivation. In this section a temporary taking will suffice to complete the offense.

DECISIONS UNDER FORMER LAW

Restoration of Property

Bank's temporary use of bond to which it held legal title as trustee for a subscriber as collateral to secure a loan to the bank was not, under former section 94-2717, larceny without an intent to de-

prive the owner permanently of his property and where the bond was in fact restored before demand for it or before information filed. *State v. Wallin*, 60 M 332, 199 P 285.

94-6-304.1. Obtaining communication services with intent to defraud. In a prosecution under section 94-6-304 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

1. by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information, or,
2. by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, electronically, or,
3. by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means, or,
4. by making, assembling, or possessing any instrument, apparatus, equipment or device, or the plans or instructions for the making or assembling of any instrument, apparatus, equipment or device which is designed, adapted or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence or place of origin or destination of any telecommunications, or

5. by publishing the number or code of an existing, canceled, revoked, expired or nonexistent credit card or the numbering or coding which is employed in the issuance of credit cards, with the intent that it will be used to avoid the payment of lawful telecommunications charges, or by publishing, advertising, selling, giving, or otherwise transferring to another, plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device such as described in subparagraph 4 with the intent that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunication charges. For the purpose of this subparagraph, the term "publication" means the communication of information to any one or more persons, either orally, in person, or by telephone, radio, or television, or in a writing of any kind, including, but not limited to, a letter or memorandum, circular or handbill, newspaper or magazine article or book.

History: En. 94-6-304.1 by Sec. 1, Ch. 156, L. 1974.

Title of Act

An act relating to obtaining communication services with intent to defraud.

94-6-305. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had he known of it.

History: En. 94-6-305 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 223-9.

Commission Comment

Common-law larceny did not cover the

use of an auto for purposes of a joyride, or where the bailee of a vehicle or animal used the bailed chattel for his own purposes, because larcenous intent was usually found to be absent. This section is intended to deal with that problem.

DECISIONS UNDER FORMER LAW

Amendment of Information

Where first information charged violation of former section 94-3305, unauthorized use of vehicle, and second information, based on same taking, charged grand larceny in violation of former section 94-2701, the second information was in effect an amendment of the first information and

might have been objected to because filed after arraignment on the first information; however, defendant waived his objection by pleading to the second information and moving to dismiss the first. *Gransberry v. State*, 149 M 158, 423 P 2d 853.

94-6-306. Offender's interest in the property. (1) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

History: En. 94-6-306 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 16-4.

Commission Comment

Subsection (1) is substantially the same as Model Penal Code, Tent. Draft No. 2, § 206-11(1), (See comment, p. 100). The provision removes any doubt regarding the commission of theft by a co-owner, such as a partner, joint tenant or tenant in common, or any other type of co-owner who exercises unauthorized control with the purpose to permanently deprive a co-owner of his interest in the property.

Subsection (2) recognizes that unless the husband and wife have separated and are living in separate abodes when the supposed theft occurs the criminal law should not intrude into what usually is a civil fight over property, the true ownership of which is dubious at best. The divorce court should be better informed regarding the relationship between the parties and should determine the proper distribution of the property. If, however, the parties have separated and are living in separate abodes and theft occurs, there seems to be no good reason why such conduct should not be punished in the Criminal Code.

DECISIONS UNDER FORMER LAW

Claim of Interest

Evidence of statements made by defendant indicating his intention to retain money due his principal as a means of protecting his own supposed claim against principal was inadmissible as hearsay and self-serving. *State v. Fairburn*, 135 M 449, 340 P 2d 157.

Partnership Property

Where, under an agreement to form a partnership, one party gave money to the other for the purposes of the partnership, the one receiving money was merely a bailee until such time as the partnership had actually been formed, and misappropriation of the money by the bailee fell within the definition of larceny in former section 94-2701 despite the fact that a partner could not embezzle partnership property. *State v. Brown*, 38 M 309, 99 P 954.

Restoration of property was not available under former section 94-2717 as a defense to the crime of uttering fraudulent checks where no restitution on any of the counts had been made until after the informations had been filed against the defendant. *State v. Skinner*, — M —, 515 P 2d 81.

Restitution

Restoration of property was not available under former section 94-2717 as a defense to the crime of uttering fraudulent checks where no restitution on any of the counts had been made until after the informations had been filed against the defendant. *State v. Skinner*, — M —, 515 P 2d 81.

94-6-307. Deceptive practices. (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred; or

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services; or

(c) makes or directs another to make or knowingly accepts a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit; or

(d) obtains, or attempts to obtain property, labor or services by any of the following means:

(i) Using a credit card which was issued to another, without the other's consent.

(ii) Using a credit card that has been revoked or canceled.

(iii) Using a credit card that has been falsely made, counterfeited, or altered in any material respect.

(iv) Using the pretended number or description of a fictitious credit card.

(v) Using a credit card which has expired provided that credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained, or attempted to be obtained exceeds one hundred fifty dollars (\$150) then the offender shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-6-307 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 17-1.

Commission Comment

This section supplements section 94-6-302(2)(b). Most outright swindles with no pretext of legitimacy will fall within section 94-6-302(2) and be prosecuted thereunder because of the greater penalty. Section 94-6-307 is designed to cover a greater variety of deceptive practices than were formerly proscribed by Montana law (See

Title 94, chapter 18, which contains such offenses as: obtaining property or services by false pretenses; confidence games; sale without consent of holder; deception in the sale of land; etc.; and chapter 21, fraudulent conveyances.) See also R. C. M. 1947, section 94-1803 (False statement respecting financial condition) and section 94-35-256 (Workmen—false representation to procure punishable.)

The four (4) subsections of this section are intended to cover deceptive practices which might not fall under the prohibition of section 94-6-302, Theft.

DECISIONS UNDER FORMER LAW

False Financial Statement

Defendant who obtained a bank loan by misrepresenting his ownership of ranch land, livestock and feed, was guilty of obtaining property under false pretenses under former section 94-1805, and it did not matter that the bank credited defendant's account rather than paying him money directly. *State v. Mason*, 62 M 180, 204 P 358.

Defendant who induced the complaining witness to give him a ring by saying that he had an oil well in Louisiana from which he received \$800 a month income and that he would cut her in for \$200 of that income should have been prosecuted under former section 94-1805 for "obtaining

money or property by false pretenses," rather than for confidence game under former section 94-1806, where jury could assume that defendant's statements were false since the complaining witness received neither the first \$200 nor any other payment. *State v. Allen*, 128 M 306, 275 P 2d 200.

Promissory Note

It was doubtful whether inducing another to execute a promissory note was defrauding of property within the meaning of former section 94-1805, which covered obtaining property under false pretenses. *State v. Bratton*, 56 M 563, 186 P 327.

94-6-308. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(b) sells, offers, or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure; or

(d) sells, offers or exposes for sale adulterated commodities; or

(e) sells, offers or exposes for sale mislabeled commodities; or
 (f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage; or

(b) represented as being another person's produce, though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-6-308 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as the proposed Michigan Code, section 4105.

Commission Comment

This section replaces a large number of statutes in the old code which provided

for the content of goods, marks which they are to bear and the use of false weights and measures. The purpose of this section is to provide a single, simple definition for false weights and measures, short weight sales and purchases, adulteration, mislabeling of commodities, and false advertising.

DECISIONS UNDER FORMER LAW

False Weights

An act which constituted a misdemeanor under former section 90-602, the weights and measures statute, and at the same time a felony under former section 94-1805, the false pretenses statute, could be prosecuted under either in the state's dis-

cretion, and when it was prosecuted as a felony, defendant was not entitled to an instruction on the other offense as a lesser and included offense since former section 90-602 required a sale but section 94-1805 did not. *State v. Lagerquist*, 152 M 21, 445 P 2d 910.

94-6-308.1. Chain distributor schemes. (1) As used in this act [section]:

(a) "Person" means a natural person, corporation, partnership, trust or other entity and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors and other persons in act of control of the activities of each entity.

(b) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment, and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this act [section] shall be deemed guilty of a felony and upon conviction shall be imprisoned in the

state prison for a period not to exceed one (1) year, or punishable by a fine not to exceed one thousand dollars (\$1,000), or both such fine and imprisonment.

Any person convicted of a second offense under this act [section] shall be imprisoned in the state prison for a period not to exceed five (5) years or punishable by a fine not to exceed five thousand dollars (\$5,000) or both such fine and imprisonment.

History: En. Secs. 1 to 3, Ch. 465, L. 1973; R. C. M. 1947 Supp., secs. 94-1832 to 94-1834.

arrangement and has inserted subsection and subdivision designations in the same style as in the Criminal Code.

Compiler's Note

This section was not part of the Criminal Code of 1973 but is derived from a separate 1973 act. The compiler has placed the section here in the interest of orderly

Title of Act

An act prohibiting the use of chain distributor schemes; and providing a penalty.

94-6-309. Issuing a bad check. (1) A person commits the offense of issuing a bad check when, with the purpose of obtaining control over property or to secure property, labor or services of another, he issues or delivers a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within five (5) days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme, or if the value of any property, labor or services obtained, or attempted to be obtained exceeds one hundred fifty dollars (\$150), he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-6-309 by Sec. 1, Ch. 513, L. 1973.

Source: Derived from Illinois Criminal Code, Chapter 38, section 17-1(d).

Commission Comment

Bad check laws, in addition to eliminating the doubt as to liability on false promises, accomplish two other things which seem worth preserving: (a) they eliminate the requirement of proof of obtaining property by means of false pretense; and (b) they create a presumption of knowledge that the check would not be paid under certain circumstances. The

presumption of knowledge is probably the most important practical reason for maintaining special bad check provisions. In the fictitious account case it is possible but highly improbable that the transaction was innocent; the drawer may absent-mindedly have put the name of the wrong bank on a blank check, or he may have intended to open an account before the check was presented. In the case of checks on real but inadequate accounts, the chance of innocent miscalculation by the drawer is much greater but is negated by a refusal to make the check good.

DECISIONS UNDER FORMER LAW

False Pretenses

Fact that defendant might have been charged with a misdemeanor under the fraudulent check statute did not prevent his conviction of felony under former sec-

tion 94-1805, the false pretense section; a person may be guilty of violating two statutes by the same act. *State v. Evans*, 153 M 303, 456 P 2d 842.

Fictitious Account

The offense was complete when defendant passed a check, knowing that no one by the name signed as maker had an account with the bank, and it was no defense that defendant had no notice of nonpayment or that he later made restitution. *State v. Johnston*, 140 M 111, 367 P 2d 891.

Five-day Notice Provision

In prosecution under former section 94-2702, trial court did not err in refusing to instruct jury there could be no conviction in absence of any showing that the five-day notice specified in the statute had been given; five-day notice provision was created by legislature in order to obviate necessity of proving defendant's intent to defraud and knowledge of insufficient funds and provided only an alternative method of establishing a prima facie case and was therefore only a rule of evidence and not essential to the establishment of the crime. *State v. Skinner*, — M —, 515 P 2d 81.

Other Offenses

In prosecution for uttering and delivering a fraudulent check under former section 94-2702, evidence was properly re-

ceived as to other checks drawn on prior occasions on banks in which defendant had no account as such testimony tended to show defendant's intent to defraud. *State v. Tully*, 148 M 166, 418 P 2d 549.

Postdated Check

Defendant who gave a postdated check, stating honestly that he did not then have sufficient funds but that the bank would honor the check by the time of its date, did not misrepresent present facts but merely made a promise as to the future; this did not constitute a violation of former section 94-2702, the fraudulent check law, even though the check was dishonored when presented. *State v. Patterson*, 75 M 315, 243 P 355.

Restitution

The crime of uttering fraudulent checks under former section 94-2702 was one of the crimes of larceny under former section 94-2717 to which restoration of property was a defense; however, the defense was not available where no restitution on any of the counts had been made until after the informations had been filed against defendant. *State v. Skinner*, — M —, 515 P 2d 81.

94-6-310. Forgery. (1) A person commits the offense of forgery when, with purpose to defraud, he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time, or with different provisions, or of different composition; or

(b) issues or delivers such document or other object knowing it to have been thus made or altered; or

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter or terminate any right, obligation or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes, but is not limited to, one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months or both. If the forgery is part

of a common scheme or if the value of the property, labor or services obtained or attempted to be obtained, exceeds one hundred fifty dollars (\$150) the offender shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

History: En. 94-6-310 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 17-3.

Commission Comment

There is doubt that a specific forgery law is necessary because the provisions dealing with false pretense and fraud

should be adequate to cover forgery. Forgery is retained as a distinct offense partly because the concept is so embedded in popular understanding that it would be unlikely that any legislature would completely abandon it, and partially in recognition of the special effectiveness of forgery as a means of undermining public confidence in important symbols of commerce, perpetrating large scale frauds.

DECISIONS UNDER FORMER LAW

Accomplices

Making a false endorsement and passing the instrument with knowledge of the falsity of the endorsement are separate offenses, and the person who makes the endorsement is not necessarily an accomplice to the offense of passing it, so that his testimony did not require corroboration as would that of an accomplice. *State v. Phillips*, 127 M 381, 264 P 2d 1009.

Alteration of Document

Information alleging alteration of a document in violation of former section 94-2001 was required to set forth the particulars of the alteration since not every alteration but only material alterations are in violation. *State v. Mitten*, 36 M 376, 92 P 969.

Where information alleged forgery by making of a document but not by alteration, it was prejudicial error to give an instruction on alteration. *State v. Mitten*, 36 M 376, 92 P 969.

Severance of a promissory note from a purchase order, thus making the note negotiable instead of nonnegotiable, constituted such material alteration of the instrument as to constitute forgery within the meaning of former section 94-2001. *State v. Mitton*, 37 M 366, 96 P 926, explained in 52 M 359, 365, 157 P 951, 953.

Information charging that defendant knowingly passed a forged instrument need not specify the means by which the forgery was done, and evidence that defendant knew the instrument had been altered supported the allegation. *State v. Mitton*, 37 M 366, 96 P 926.

Apparatus for Counterfeiting

Information charging possession of "apparatus, paper and other things" for use in counterfeiting was sufficient under former section 94-2011, and it was not necessary that the apparatus be described with

greater particularity. *State v. Shannon*, 95 M 280, 26 P 2d 360, overruled on other grounds in 125 M 566, 589, 242 P 2d 477, 488.

Authority to Sign Document

Bank officers who were authorized to issue travelers' checks, on condition that they collect and remit the amount thereof to the drawee bank, did not commit forgery in issuing such checks without collecting or remitting the amount. *State v. Alexander*, 73 M 329, 236 P 542.

Where executor of estate signed blank checks on the estate's account and authorized attorney to use them by filling in names of creditors and distributees of the estate, attorney's unauthorized filling in of his own name or that of his creditor constituted forgery within the meaning of former section 94-2011. *State v. Daems*, 97 M 486, 37 P 2d 322.

Document Forged or Counterfeited

There was no violation of former section 94-2001 where the instrument forged did not purport to impose any liability on the purported maker but merely directed the addressee to charge an advance to the defendant's account. *State v. Evans*, 15 M 539, 39 P 850.

A warrant for payment out of a particular city fund, apparently valid on its face, was protected by former section 94-2001, and alteration thereof was forgery despite the fact that the warrant may have been unlawfully issued because in excess of the debt limitations for the city. *State v. Brett*, 16 M 360, 40 P 873.

Where an instrument appeared on its face to be the obligation of a bank, it was not necessary to allege or prove by extrinsic evidence that such a bank existed in order to convict for forgery of an endorsement in violation of former section 94-2001. *State v. Patch*, 21 M 534, 55 P 108.

Juror's fee certificate which did not bear the district court seal required by statute was void on its face and counterfeiting thereof was not forgery. In re Farrell, 36 M 254, 92 P 785.

It is not necessary that the instrument be negotiable for its false making or endorsement to constitute forgery. Ex parte Solway, 82 M 89, 265 P 21; State v. Phillips, 127 M 381, 264 P 2d 1009.

Checks on the account of an estate were apparently valid when signed by one of the executors and unauthorized completion of the checks constituted forgery despite the fact that they were not signed by the other executor as required by law. State v. Daems, 97 M 486, 37 P 2d 322.

Under former section 94-2001, it was not necessary that the forged instrument create civil liability before it could be held to be forgery. State v. Phillips, 127 M 381, 264 P 2d 1009.

State auditor's warrant was an order within the meaning of former section 94-2001, and the affixing of a false endorsement thereto was forgery under the section. State v. Phillips, 127 M 381, 264 P 2d 1009.

Endorsement of Instrument

The offense of forgery was complete when defendant, with intent to defraud, wrote a check to himself and forged the name of another as maker, and it was immaterial that the check was later passed without being endorsed. Ex parte Solway, 82 M 89, 265 P 21.

Indians

State court had no jurisdiction of prosecution of an enrolled and allotted Indian for forgery and attempted passing of a check within the exterior boundaries of an Indian reservation, even on patented land. State ex rel. Bokas v. District Court, 128 M 37, 270 P 2d 396.

State court had jurisdiction of prosecution of Indian for passing a forged check outside the reservation even though the check originated within the reservation and belonged to another Indian. Petition of Fox, 141 M 189, 376 P 2d 726.

Intent

In prosecution for knowingly passing altered instrument, evidence of other similar acts by defendant about the same time was admissible as bearing on intent. State

v. Mitton, 37 M 366, 96 P 926; State v. Daems, 97 M 486, 37 P 2d 322; State v. Phillips, 127 M 381, 264 P 2d 1009.

Where defendant cashed a check found in his pocket without any recollection of having seen the purported maker and the check was apparently made to him as payee under a different name than that previously used for him by the same purported maker, he had the requisite criminal intent despite intoxication and, the maker's signature having been forged, he was guilty of forgery under former section 94-2001. State v. Cooper, 146 M 336, 406 P 2d 691.

In the absence of evidence that he knew the checks were forged or that the person giving him the checks was a convicted forger, defendant who passed forged checks should have been acquitted. State v. Phillips, 147 M 334, 412 P 2d 205.

Person Defrauded

Forgery of a payee's signature and delivery to the obligor showed intent to defraud the payee as well as the obligor. State v. Patch, 21 M 534, 55 P 108.

Information failing to name the person it was intended to defraud would be held bad on demurrer, but the omission was not subject to attack in collateral proceedings on habeas corpus where there was an allegation of general intent to defraud. Ex parte Solway, 82 M 89, 265 P 21.

Allegation of intent to defraud either the bank or the purported maker would have supported conviction of forgery by the false signing of another's name as maker of a check. Ex parte Solway, 82 M 89, 265 P 21.

Where information charging forgery of checks on the account of an estate alleged intent to defraud the executors, the bank and the payee, proof that the executors were defrauded was sufficient and the naming of the other two could be regarded as surplusage. State v. Daems, 97 M 486, 37 P 2d 322.

Pleadings

It was proper for an information to contain two counts relating to the same instrument, one alleging that defendant made the forgery and the other that defendant passed the instrument knowing it to have been forged. State v. Mitton, 37 M 366, 96 P 926.

94-6-311. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys or otherwise obscures the manufacturer's serial number or any other distinguishing identifica-

tion number or mark upon any machine, vehicle or electrical device, with the purpose to conceal, misrepresent or transfer any such machine, vehicle or electrical device; or

(b) possesses with the purpose to conceal, misrepresent or transfer any such machine, vehicle or device knowing that such serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-6-311 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as proposed New York Criminal Code, section 170-65.

Commission Comment

This section is directed at a specialized class of criminals who deal in machinery and motor vehicles. The citizen is given the opportunity to avoid criminal liability by reporting the fact of the obscured identity to the proper agency.

Vehicles and certain kinds of machinery are particularly vulnerable to organized rings who steal, attempt to render unidentifiable and resell them. Under the old law only farm machinery was protected from such alteration. (See R. C. M. 1947, section 94-35-262.)

Possession of a vehicle or machine with obscured identity is also a violation, but there must be a purpose to misrepresent and knowledge that the identification number or mark has been obscured or altered. The burden of proving purpose and knowledge rests with the state.

94-6-312. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-6-312 by Sec. 1, Ch. 513, L. 1973.

Source: Derived from Revised Codes of Montana 1947, sections 94-3504, 94-3514.

Commission Comment

This section is merely a recodification

of old Montana law. Although the offense of forgery would seem to make the same acts punishable, the commission deemed it necessary to have this specific statute included in the code in light of the special problems that Montana law enforcement authorities face in the area of cattle rustling.

DECISIONS UNDER FORMER LAW

Unauthorized Brand

An unauthorized brand or mark did not have to touch, alter or deface a former

brand on an animal to be in violation of former section 94-3504. *State v. Johnson*, 155 M 351, 472 P 2d 287.

94-6-313. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in section 87-1-201 (37) [87A-1-201 (37)] of the Uniform Commercial Code.

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property, or of the proceeds and value therefrom, may be prosecuted under section 94-6-302.

History: En. 94-6-313 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 367, L. 1975.

Source: Substantially the same as Model Penal Code, section 224.10.

Commission Comment

The states commonly provide criminal penalties for debtors or conditional vendees who dispose of property subject to a security interest to the prejudice of the secured creditor. This is necessary because laws dealing with theft are framed in terms of larceny or embezzlement of goods "of another." Although there is a need for penal legislation in this area, it is possible to go too far in providing penalties for acts such as removing encumbered property from the county or selling the property without the consent of the secured creditor. Such behavior may be evidence of fraud, but it is also quite consistent with innocence, as where the owner-debtor drives his mortgaged car to an out-of-state resort for a weekend without notifying the finance company, or where he

trades the car in on a new car without finance company consent, but makes adequate arrangements to discharge the old debt.

The offense is classified as a misdemeanor regardless of the amount involved. This differs from the section on theft, section 94-6-302 under which stealing amounts over one hundred fifty dollars (\$150) is felonious. The difference seems justified because offenders against this section are less obviously dangerous than outright thieves who take property to which they have no claim. Moreover, sellers can better guard against this kind of criminal behavior in extending credit.

It is no longer a criminal offense to remove mortgaged property from the county as under former Montana law but the section retains the prohibition against removing secured property from the state.

Amendments

The 1975 amendment added subsection (4).

DECISIONS UNDER FORMER LAW

Intent

To constitute the crime of removing mortgaged chattels from the county under former section 94-1811, it was necessary that the removal be made with the

intent of depriving the mortgagee of his claim thereto or interest therein. *Averill Machinery Co. v. Taylor*, 70 M 70, 223 P 918.

94-6-314. Effect of criminal possession of stolen property. Possession of stolen property shall not constitute proof of the commission of the offense of theft; such fact shall place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all other evidence pointing to his guilt.

History: En. 94-6-314 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section represents a substantial change in the prevailing theory concerning possession of stolen property.

Possession of stolen property is not per se a punishable offense. Possession of stolen

property is one of the circumstances which may be considered in establishing that the defendant is guilty of theft.

The provision that the possessor of the stolen property has the burden of removing the evidentiary effect of the possession of the stolen goods may deprive the defendant of the presumption of innocence as well as his right to remain silent. However, in *State v. Gray*, 152 M

145, 447 P 2d 475, 478 (1968), the court held that these fundamental constitutional

rights were not violated by such a provision.

DECISIONS UNDER FORMER LAW

Explanation of Possession

It was proper to instruct jury that one found in possession of stolen property must explain such possession in order to remove the effect of that fact as a circumstance, to be considered with other evidence, pointing to his guilt. *State v. Gray*, 152 M 145, 447 P 2d 475, explaining *State v. Greeno*, 135 M 580, 342 P 2d 1052.

tion 94-2704.1 that possession of recently stolen livestock is prima facie evidence of guilt of larceny was proper. *State v. Gloyne*, 156 M 94, 476 P 2d 511.

State did not have to overcome presumption of larceny contained in former section 94-2704.1 to convict one in possession of stolen livestock of being a receiver of stolen property under former section 94-2721. *State v. Watkins*, 156 M 456, 481 P 2d 689.

Livestock

Instruction in language of former sec-

CHAPTER 7

OFFENSES AGAINST PUBLIC ADMINISTRATION

Part 1—Bribery and Corrupt Influence

- Section 94-7-101. Definitions.
 94-7-102. Bribery in official and political matters.
 94-7-103. Threats and other improper influence in official and political matters.
 94-7-104. Compensation for past official behavior.
 94-7-105. Gifts to public servants by persons subject to their jurisdiction.

Part 2—Perjury and Other Falsification in Official Matters

- 94-7-201. Definitions.
 94-7-202. Perjury.
 94-7-203. False swearing.
 94-7-204. Unsworn falsification to authorities.
 94-7-205. False alarms to agencies of public safety.
 94-7-206. False reports to law enforcement authorities.
 94-7-207. Tampering with witnesses and informants.
 94-7-208. Tampering with or fabricating physical evidence.
 94-7-209. Tampering with public records or information.
 94-7-210. Impersonating a public servant.

Part 3—Obstructing Governmental Operations

- 94-7-301. Resisting arrest.
 94-7-302. Obstructing a peace officer or other public servant.
 94-7-303. Obstructing justice.
 94-7-304. Failure to aid a peace officer.
 94-7-305. Compounding a felony.
 94-7-306. Escape.
 94-7-307. Transferring illegal articles or unauthorized communication.
 94-7-308. Bail-jumping.
 94-7-309. Criminal contempt.

Part 4—Official Misconduct

- 94-7-401. Official misconduct.

Part 5—Treason, Flags and Related Offenses

- 94-7-502. Desecration of flags.
 94-7-503. Criminal syndicalism.
 94-7-504. Bringing armed men into the state.

Part 1

Bribery and Corrupt Influence

94-7-101. Definitions. In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

History: En. 94-7-101 by Sec. 1, Ch. 513, L. 1973.

94-7-102. Bribery in official and political matters. (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(2) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed ten (10) years, and shall forever be disqualified from holding any public office in this state.

History: En. 94-7-102 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Model Penal Code, section 240.1.

Commission Comment

Subsection (a) prohibits the giving or receiving of any pecuniary benefit to influence official or political discretion. Offers of nonpecuniary gain, e.g., political support, honorific appointments, are pen-

alized under subsection (b) but limited to judicial and administrative proceedings. "Administrative proceedings" is defined in section 94-2-101(3) and includes some actions that might be called "executive" or "administrative," where the official action applies a general rule to an individual, e.g., in granting or revoking a license, awarding veteran's disability compensation or social security payments. Gifts to officials are covered by section 94-7-105.

DECISIONS UNDER FORMER LAW

Disbarment

Bribery of members of the legislature was a felony under former section 94-2905 and would furnish ample ground for disbarment even though the acts were not in the attorney's official capacity, but the supreme court would not, as a matter of policy, act on disbarment until after criminal prosecution. In re Wellcome, 23 M 140, 58 P 45.

Intent

Allegation that sheriff received a bribe did not charge a violation of former section 94-3904 without an allegation of

agreement that his official action would be influenced; sheriff may have intended entrapment or some other lawful purpose. State ex rel. Beazley v. District Court, 75 M 116, 241 P 1075.

Jurors

Former section 94-801, covering bribery of judicial officials, applied to members of the jury panel who might be selected to try a case, not just to those who had been selected and sworn. State ex rel. Webb v. District Court, 37 M 191, 95 P 593.

On prosecution for attempt to influence

grand juror, evidence of transactions after juror had been discharged by operation of law was inadmissible even though defend-

ant did not know that juror had been discharged. State v. Porter, 125 M 503, 242 P 2d 984.

94-7-103. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty; or

(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication designed to influence the outcome on the basis of considerations other than those authorized by law. It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason; or

(e) as a juror, or officer in charge of a jury, receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-7-103 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 240.2.

timidation to influence the behavior of public officials is much rarer than legislation against bribery, although there are many statutes relating to jurors, legislators, and law enforcement officers.

Commission Comment

Penal legislation against the use of in-

DECISIONS UNDER FORMER LAW

Jurors

On prosecution for attempt to influence grand juror, evidence of transactions after juror had been discharged by operation of law was inadmissible even though defendant did not know that juror had been discharged. State v. Porter, 125 M 503, 242 P 2d 984.

Regular Course of Proceedings

Conversations with a grand juror at his home were clearly outside the regular course of proceedings of the grand jury so were not within the communications permitted by the exception to former section 94-804. State v. Porter, 125 M 503, 242 P 2d 984.

94-7-104. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts or agrees

to accept any pecuniary benefit as compensation for having, as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers or agrees to confer compensation, acceptance of which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-7-104 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Model Penal Code, section 240.3.

Commission Comment

There is little legislative precedent for this section, but it obviates the difficulty occasionally encountered in a bribery

prosecution when the defendant contends that he did not solicit or receive anything until after the official transaction had been completed. This behavior should be discouraged because it undermines the integrity of government. Compensation for past action implies a promise of similar compensation for future favor.

94-7-105. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory function, or conducting inspections or investigations, or carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision, shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) **Exceptions.** This section shall not apply to:

(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer, or offer, or agree to confer, any benefit prohibited by the foregoing subsections.

(7) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 240.5.

Commission Comment

This section covers gifts by businessmen to government inspectors or by car-

riers and utilities to regulatory authorities. In some cases a noncriminal sanction against a public servant would be preferred, but there is difficulty in arriving at satisfactory generalizations for all classes of persons and conduct covered by this section. This section is broader than the old law.

Part 2

Perjury and Other Falsification in Official Matters

94-7-201. Definitions. In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

History: En. 94-7-201 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The prevalence of perjury has become a matter of increasing concern, resulting in a Model Act on Perjury by the National Conference of Commissioners on Uniform State Laws, in 1952. Prevailing perjury laws have the following defects:

(1) A person may not be convicted of perjury if he makes contradictory statements under oath, unless the indictment charges and the prosecution proves that one of the contradictory statements is false;

(2) Proof of falsity of a statement alleged to be false must be established by two independent witnesses or by one witness and corroborating circumstances;

(3) A false statement must be proved not only to be false but also to be material to the proceeding for which it was made;

(4) Penalties are severe. In less aggravated forms of perjury, much could be gained by making penalties less severe;

(5) The attempt to define the crime as "willful" or "voluntary," rather than "intentional" or by description of the actual state of mind of the defendant, has resulted in metaphysical distinctions by the courts.

The general plan of the sections pre-

sented is as follows. Section 94-7-202 defines the situations in which lying to officials constitutes a felony. The distinguishing features of this offense are: (a) oath or equivalent affirmation; (b) materiality of the falsification; and (c) requirement that the falsification be in an official proceeding involving a hearing. If the falsification is under oath, it nevertheless constitutes only the misdemeanor of "false swearing," as provided in section 94-7-203, where either of the other elements is lacking. Under subsection (2) of section 94-7-203, the offense is also a misdemeanor if the falsification under oath is not in an official proceeding or made with the purpose to mislead an official. The usual case to which this would apply would be falsification in a writing sworn to before a notary, but it would also apply to falsification in an affidavit filed with the government in a nonhearing matter where the falsification was immaterial or without the purpose to mislead. The requirement of purpose to mislead in sections 94-7-203 and 94-7-204 is intended to serve somewhat the same function as the requirement of materiality in section 94-7-202, i.e., to prevent application of the sanctions to trivial misstatements not calculated to obstruct justice. Unsworn oral falsification is made punishable only in situations specifically designated in sections 94-7-205 and 94-7-206, although these sections would also apply to written misinformation of the kinds specified.

94-7-202. Perjury. (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under

oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed ten (10) years.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

History: En. 94-7-202 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 241.1.

Commission Comment

The proposed definition of "materiality" in subsection (3) does not differ substantially from that given by prior law. The question of materiality in a perjury trial is not governed by the rules of evidence applicable in the proceeding. It would be against public policy to immunize false swearing merely because the testimony might have been excluded on objection which was not made. The result would be that an unqualified expert witness could not be punished for consciously falsifying an opinion which he did in fact give to the jury. It should be noted that this section applies to grand jury proceedings, legislative investigations, and administrative hearings, as well as to court trials, each with its own peculiar rules of

evidence. Technical irregularities in the administration of the oath are of no concern to the defendant as provided in subsection (4). This is not a change from prior law. Subsection (5) making a retraction a defense is new. It is included in many state code revisions since it attempts to preserve incentive to correct falsehoods, without impairing the compulsion to tell the truth in the first place. The danger that witnesses might be encouraged to take a chance on perjury is limited by the requirement that recantation must take place before the falsity becomes manifest. The distinctive feature of subsection (6) is that accusation and proof in the alternative is authorized, without relieving the prosecution of the burden of proving mens rea. The defendant would not be able to escape conviction because the state cannot prove which of the contradictory statements was false and known to be so. The rule that proof of falsity be by at least two witnesses

with corroborating circumstances was adopted at common law because of the problem created by an oath against an oath. The policy question to be decided is whether the protection of witnesses coun-

ter-balances the occasional inability to convict an apparent perjurer. The majority of jurisdictions still require at least one witness and corroborating circumstances.

DECISIONS UNDER FORMER LAW

Knowledge of Falsity

Attorney's statement that a note had been delivered to a corporation was not perjury justifying disbarment where the evidence showed that the attorney had endorsed the note and given it to his partner, who was an agent for the corporation, with instructions to deliver it to the corporation, so that the attorney had reason to believe his statement true. In re McCue, 80 M 537, 261 P 341.

Even though one can be guilty of perjury in making an unqualified statement when he does not have knowledge as to its truth, yet it is not perjury to make a statement in good faith and in the belief of its truth even though the statement later proves false. State v. Jackson, 88 M 420, 293 P 309.

Material Statement

Statement by witness at murder trial

that he arrived at a certain town at a certain time the day after the homicide, which statement related indirectly to a trip during which the homicide weapon was allegedly disposed of, was not a material statement, so was not perjury, even though it contradicted the testimony and might have reflected on the credibility of another witness. State v. Hall, 88 M 297, 292 P 734.

Pleadings

An information charging perjury in swearing that a certain event happened at 11 o'clock, without stating whether it was in the morning or at night, was sufficient, where no person of ordinary intelligence could, from a reading of other portions of the pleading, have arrived at any other conclusion than that it meant 11 o'clock in the forenoon. State v. Jackson, 88 M 420, 293 P 309.

94-7-203. False swearing. (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true, and:

- (a) the falsification occurs in an official proceeding; or
 - (b) the falsification is purposely made to mislead a public servant in performing his official function; or
 - (c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.
- (2) Subsections (4) to (7) of section 94-7-202 apply to this section.
- (3) A person convicted of false swearing shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-7-203 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 241.2.

Commission Comment

This section makes it a misdemeanor to swear falsely in cases not amounting to perjury under section 94-7-202. Thus, if the false statement is made in an official proceeding, but is not material, it falls within subdivision (a) of subsection (1). If it is material, but is not

made in an official proceeding involving a hearing, subdivision (b) applies. Subdivision (c) applies where an affidavit is sworn to before a notary public, but is restricted to affidavits required by law. The possibility of abuse where there is criminal liability for falsification in private affidavits has occurred where such law exists. For example, small loan companies have been known to obtain oaths from debtors and threaten criminal charges to collect on their loans.

DECISIONS UNDER FORMER LAW

Venue of Prosecution

Where defendant swore to a false statement before a notary public in Lake

County in a document to be filed with the state board of equalization in Lewis and Clark County, the offense was com-

plete when the document was placed in the mails addressed to the board or was handed to some other person with instructions to deliver it to the board, and the district court of Lewis and Clark

County did not have jurisdiction in the absence of evidence that defendant personally delivered the document to the board's office. *State v. Rother*, 130 M 357, 303 P 2d 393.

94-7-204. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he

(a) makes any written false statement which he does not believe to be true; or

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-7-204 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 241.3.

Commission Comment

This section was suggested by 18 U. S.C. Sec. 1001, which authorizes imprisonment up to five (5) years for knowing mis-statement of material fact in "any matter within the jurisdiction of any de-

partment or agency of the United States." There is no parallel in the Montana law. There is a requirement of writing and purpose to mislead in this section, as well as the extension of liability to misleading omissions, in subdivision (1)(b), and to things other than writings, e.g., false samples, etc., in subdivision (1)(d). If there is a pecuniary benefit from misleading omissions, the code provisions on theft by deception would apply.

94-7-205. False alarms to agencies of public safety. (1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-7-205 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Model Penal Code, section 241.4.

Commission Comment

This section covers all dangerous emergency alarms, e.g., floods, hurricanes,

landslides, civil defense. The police force would qualify as an emergency organization. The provision is justifiable on the ground of waste of government resources and the likelihood that the actor will cause personnel or equipment to be unavailable to deal with real emergencies.

94-7-206. False reports to law enforcement authorities. (1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another; or

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-7-206 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 241.5.

Commission Comment

Few state statutes now deal with this of-

fense. The recent Wisconsin Code, section 346.30(a) requires that the officer act in reliance upon such false information, but such behavior is likely to have antisocial consequences regardless of any action in reliance.

94-7-207. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowing attempts to induce or otherwise cause a witness or informant to:

- (a) testify or inform falsely; or
- (b) withhold any testimony, information, document or thing; or
- (c) elude legal process summoning him to testify or supply evidence; or
- (d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-7-207 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 241.6.

Commission Comment

This section covers "informants" and

"witnesses." Under prior law most such offenses were misdemeanors. This section gives the judge discretion to impose a sentence of up to ten (10) years if the circumstances justify it.

DECISIONS UNDER FORMER LAW

Secreting Witness

The action of a party to a civil action in secreted and forcibly keeping in hiding a material witness of his adversary until the trial was concluded, and thus suppressing material testimony, constituted a misdemeanor under former section 94-1705 and was an offense so odious and so utterly at war with every intelligent notion of the due administration of justice

as to require a new trial after a verdict for the party who tampered. *Buntin v. Chicago, M. & St. P. Ry. Co.*, 54 M 495, 172 P 330.

Accused's attempt to hide state's witness against him in a criminal prosecution and to intimidate her could have been grounds for prosecution under former section 94-1705. *State v. Crockett*, 148 M 402, 421 P 2d 722.

94-7-208. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he

(a) alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed ten (10) years.

History: En. 94-7-208 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Model Penal Code, section 241.7.

Commission Comment

This section is broader than prior law since it covers investigations as well as trials and other formal proceedings.

94-7-209. Tampering with public records or information. (1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in, or false alteration of, any record, document, legislative bill or enactment, or thing belonging to, or received or issued, or kept by the government for information or record, or required by law to be kept by others for information of the government; or

(b) makes, presents or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (a); or

(c) purposely destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed ten (10) years.

History: En. 94-7-209 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 241.8.

Commission Comment

It is common to penalize falsification, destruction or concealment of public rec-

ords. The only innovation in this section is the explicit provision of subdivision (1) (b) as to fabrication of false records. This section would not cover records of private persons; however, records maintained at the behest of government, such as legislative bills or enactments would fall within this section.

DECISIONS UNDER FORMER LAW

Concealment

The willful act of an officer of the senate in failing to send a legislative bill to the clerk to receive it next in the normal course of procedure constituted "secret- ing" within the meaning of former section 94-2722. State v. Bloor, 20 M 574, 52 P 611.

Indexing

Former section 94-2722 had no refer-

ence to and did not prevent indexing of public records. State ex rel. Coad v. District Court, 23 M 171, 57 P 1095.

Intent

"Willfully" as used in former section 94-2722 required only that an act be done by design or set purpose, not that it be with intent to injure or defraud any particular person. State v. Bloor, 20 M 574, 52 P 611.

94-7-210. Impersonating a public servant. (1) A person commits the offense of impersonating a public servant if he falsely pretends to

hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-7-210 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Model Penal Code, section 241.9.

Commission Comment

Legislation prohibiting impersonation of some or all public officials is found in

most penal codes. The object is to prevent imposition on people by the pretense of authority, and partly to ensure proper respect for genuine authority by suppressing discreditable imitations. These objectives are regarded as especially important in relation to law enforcement officers.

Part 3

Obstructing Governmental Operations

94-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 94-7-301 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as the proposed Michigan Code, section 4625.

94-7-302. Obstructing a peace officer or other public servant. (1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-7-302 by Sec. 1, Ch. 513, L. 1973.

Commission Comment

Source: New. This section is designed to deal generally with the knowing obstruction of

governmental activities. It protects both peace officers and public servants in the administration of their respective duties. Generally, the section seeks to retain the coverage of the old law to encompass protection of all governmental functions. It imposes a uniform mens rea requirement for all illegal obstruction, i.e., knowingly.

The section requires a person to "knowingly" obstruct, impair or hinder govern-

ment administration. The old law required a "willful" obstruction. Subsection (2) of this section makes a distinction between the obstruction of illegal activity by a peace officer and a public servant. The commission has followed the basic premise that a person should not take the law into his own hands when faced with illegal police activity.

DECISIONS UNDER FORMER LAW

Investigation by Peace Officer

Where store delayed approval of check tendered by plaintiff for merchandise while police were called for investigation of suspected forgery, but plaintiff meanwhile demanded return of the check, it was his property and he had a right to

possession of it, and his subsequent detention after attempting to snatch the check from the hand of a police officer gave rise to a cause of action against the store. *Harrer v. Montgomery Ward & Co.*, 124 M 295, 221 P 2d 428.

94-7-303. Obstructing justice. (1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

(a) harbors or conceals an offender; or

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law; or

(c) provides an offender with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

(d) prevents or obstructs, by means of force, deception or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender; or

(e) suppresses by act of concealment, alteration or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from such official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed ten (10) years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both, if the offender has been or is liable to be charged with a misdemeanor.

History: En. 94-7-303 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The section is based on the theory that a person who aids another to elude apprehension or trial is obstructing justice and

interfering with the processes of government. It is his willingness to interfere and the harm threatened by such interference that constitutes the offense rather than any fiction that equates a "harboring" with the murderer or traitor whom he harbors.

This section makes it an offense to aid

misdeemeanants as well as felons. This result follows from the purpose to deter an obstruction of justice. Also the aider may not know what crime the offender has committed.

Knowledge or reason to believe that the putative offender is guilty of or charged with a crime is simply evidence of the purpose to aid the putative offender to elude justice. A purpose to aid the offender to avoid arrest is not proved merely by showing that defendant gave succor to one who was in fact a fugitive. When a fugitive seeks help from friends and relatives there may be other motivations in addition

to the objective of impeding law enforcement. Such other motivations are not taken into consideration by way of exception of certain classes of near kin, but could possibly be a ground for mitigating sentence after conviction. This section specifies the prohibited forms of aid in addition to the traditional offense of harboring or concealing the fugitive. Subdivision (2)(b) contains an exception to take care of cases like fellow-motorists warning speeder to slow down, or a lawyer advising a client to discontinue illegal activities.

DECISIONS UNDER FORMER LAW

Corroboration of Accessory

Witness who became an accessory after the fact under former section 94-205 by receiving part of the stolen property and by failure to report the theft did not thereby become an accomplice so as to require corroboration of his testimony. *State v. Slothower*, 56 M 230, 182 P 270.

Harboring Misdemeanant

Former section 94-205, defining as ac-

cessories after the fact persons harboring criminals, applied only to felonies, and where the charge filed against the principal was only a misdemeanor, defendant who harbored him was properly discharged on demurrer even though under the facts the principal might have been charged with a felony. *State v. Williams*, 106 M 516, 79 P 2d 314.

94-7-304. Failure to aid a peace officer. (1) Where it is reasonable for a peace officer to enlist the co-operation of a person in

(a) effectuating or securing an arrest of another (pursuant to R. C. M. 95-609), or

(b) preventing the commission by another of an offense, a peace officer may order such person to co-operate. A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(2) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-7-304 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The section is limited to "peace officer"

(see definition of peace officer in R. C. M. 1947, section 95-210). Rather than require every eighteen-year-old male to assist, a more flexible standard of reasonableness is substituted.

DECISIONS UNDER FORMER LAW

Compensation of Posse Comitatus

Former section 94-35-177, requiring adult males to join a posse comitatus when required by the sheriff, did not require or

authorize the county to reimburse members of the posse for their services or for expenses incurred. *Sears v. Gallatin County*, 20 M 462, 52 P 204.

94-7-305. Compounding a felony. (1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-7-305 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The significant difference between this section and prior law is that there is no grading of the offense.

94-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed twenty (20) years if he escapes from a state prison, county jail or city jail by the use or threat of force, physical violence, weapon or simulated weapon; or

(b) imprisoned in the state prison for a term not to exceed ten (10) years if he:

(i) escapes from a state prison, county jail or city jail; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon or simulated weapon; or

(c) fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both if he commits escape under circumstances other than (a) and (b) of this subsection.

History: En. 94-7-306 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The section classifies escapes according to the risk they create. Punishment is more severe for the offense when committed by the use of or threat of force, physical violence, weapon or simulated weapon. The grading of the offense by relying on the prisoner's use of force is actually a return to common law, since early common law clearly distinguished between escapes with and without use of

force. The grading scheme implicit in the old code by which punishment is provided in reference to the type of confinement, is not entirely abandoned by section 94-7-306. For example, use of force in escaping from a noninstitutional detention calls for a lesser punishment than escape from a prison, county or city jail. Further, an escape without use of force from a non-institutional detention as provided in subdivision (3)(c) removes the offense from the felony category altogether.

Another grading method for escapes is based on the seriousness of the crime causing the detention. The section includes the

grading indirectly in that the seriousness of the crime causing the detention is indicated by the institution in which the detention is made. For example, persons

held in the state prison will usually be felons while those in city or county jails will be misdemeanants.

DECISIONS UNDER FORMER LAW

Consecutive Sentences

Former section 94-4203, providing that sentence for escape should be consecutive to term for which then in confinement, did not result in automatic discharge of the first sentence when a prisoner was paroled on the escape sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553; Petition of Duran, 152 M 111, 448 P 2d 137.

Conspiracy to Rescue

In a prosecution for second degree assault on a police officer, evidence of a conspiracy to rescue a prisoner being

taken to jail by the officer was admissible to establish liability of members of the conspiracy not proved to have committed the assault personally. State v. Dennison, 94 M 159, 21 P 2d 63.

Lawful Detention

Neither former section 94-4207, relating to assisting a prisoner to escape, nor former section 94-4208, relating to giving a prisoner anything useful in making an escape, required proof that the imprisonment was lawful. State v. Zuidema, 157 M 367, 485 P 2d 952.

94-7-307. Transferring illegal articles or unauthorized communication.

(1) Transferring Illegal Articles.

(a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any article or thing to a person subject to official detention or is transferred any article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed twenty (20) years if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed one hundred dollars (\$100) if he conveys any other article or thing to a person subject to official detention or be imprisoned in the county jail for any term not to exceed ten (10) days, or both. This shall not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) Unauthorized Communication.

(a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed one hundred dollars (\$100) or be imprisoned in the county jail for any term not to exceed ten (10) days, or both.

History: En. 94-7-307 by Sec. 1, Ch. 513, L. 1973.

Source: Derived from Revised Codes of Montana 1947, sections 94-35-241, 94-35-264 and 94-4208.

Commission Comment

The section does not require proof of an intent to assist an inmate to escape, but requires only that the actor intended to convey the item involved. It is sufficient

that he know the nature of the item as an illegal article, i.e., something that he is prohibited from conveying to the inmate by statute, regulation or institutional rule. The offense is graded on the basis of the nature of the article or thing introduced, i.e., if the thing be a deadly weapon, the offense is a felony; and the section applies to all official detention rather than just the state prison.

DECISIONS UNDER FORMER LAW

Lawful Detention

Former section 94-4208, relating to giving a prisoner anything useful in making

an escape, did not require proof that the imprisonment was lawful. *State v. Zuidema*, 157 M 367, 485 P 2d 952.

94-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed ten (10) years. In all other cases he shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-7-308 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

Statutes designating the offense of "bail-jumping" are of comparatively recent origin. The first such statute was passed in New York in 1928, and it was over a generation later that the federal provision was enacted in 1954. Montana had no statute making it a separate punishable crime for failure to comply within a condition of a bail bond or recognizance, although such a provision had been antici-

pated. In the proposed Montana Code of Criminal Procedure of 1966, under section 95-1106, the following comment can be found: "In addition it is recommended that Montana make it a separate punishable crime not to appear, regardless of the method by which the accused was released. It is believed this will be a greater deterrent than any anticipated financial loss." The section is graded on the basis of the seriousness of the crime charged so bail-jumping in connection with a felony is a potential felony and all other cases of bail-jumping are misdemeanors.

94-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior, committed during the sitting of a court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority; or

(b) breach of the peace, noise, or other disturbance, directly tending to interrupt a court's proceeding; or

(c) purposely disobeying or refusing any lawful process or other mandate of a court; or

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory; or

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process or notice relative to juries issued pursuant to Title 93, chapters 12, 13, 14, 15, 16, 17 and 18, R. C. M. 1947.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-7-309 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as New York Penal Law, section 215-50; also derived from Revised Codes of Montana 1947, section 94-3540.

Commission Comment

See "The Increasing Use of the Power of Contempt," John L. Hiltz, 32 Mont. L. Rev. 183.

DECISIONS UNDER FORMER LAW

Attorney's Behavior

Counsel for a witness being examined in court had the right to be heard in his client's behalf, but he did not have the right to abuse his privilege to insult the court or judge, or to interrupt the orderly procedure which should characterize every judicial investigation. Arbitrary rulings or oppressive conduct on the part of the court would not warrant retaliation by an attorney or resort to undignified or insolent behavior. The law affords him ample redress. In re Mettler, 50 M 299, 146 P 747.

Change of Judge

Proceedings for contempt under former section 94-3540 were criminal in nature, even when the basis for the charge was disobedience of an injunction issued in a civil case, and the statute providing for change of judge in civil cases did not apply. State ex rel. Boston & Montana Consol. Copper & Silver Min. Co. v. Judges, 30 M 193, 76 P 10.

Civil Remedy

On prosecution for criminal contempt under former section 94-3540 for disobedience of a decree, the court had no power to order payment of costs to plaintiffs in the previous action; rather, the court exhausted its power when it imposed a fine of \$500, and any reimbursement of costs must come out of the fine. State ex rel. Flynn v. District Court, 24 M 33, 60 P 493.

Criticism of Courts

Comment on and criticism of a court's decision, once the matter is no longer pending before the court, was not prohibited by subdivision 7 of former section 94-3540 and is protected by the free speech and free press section of the Constitution. State ex rel. Metcalf v. District Court, 52 M 46, 155 P 278.

False Publication

Territorial supreme court had inherent power to protect its processes by punishing for contempt a party who, by publishing unfounded reports of undue influence by his adversaries, attempted to influence the court to hold for him to avoid further charges of corruption. Territory v. Murray, 7 M 251, 15 P 145.

Published statement that supreme court, in case still before it, was dealing out injustice and was a party to a "dirty deal" was a false and grossly inaccurate report within the meaning of subdivision 7 of former section 94-3540 and was punishable under the contempt powers of the court. State ex rel. Haskell v. Faulds, 17 M 140, 42 P 285.

Pending Cases

A case on which the supreme court had handed down a decision but which was still pending on rehearing was still pending for the purposes of contempt, and a false and grossly inaccurate report thereof was punishable as contempt. In re Nelson, 103 M 43, 60 P 2d 365.

Part 4

Official Misconduct

94-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when, in his official capacity, he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction; or

(b) knowingly performs an act in his official capacity which he knows is forbidden by law; or

(c) with the purpose to obtain advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of section 82-3402.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section, and any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all back pay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

History: En. 94-7-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 474, L. 1975.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 33-3.

Commission Comment

The intent of this section is to provide criminal sanctions when a public servant intentionally acts in a manner he knows to be contrary to regulation or statute. The existence of the section does not dispute the fundamental premise that inadequate performance in public office should be regulated by civil service.

The section provides punishment for failure to comply with specific mandatory duties set forth outside of the Criminal Code. It also provides punishment for failure to comply with mandatory duties which are set forth in provisions of the Criminal Code.

Amendments

The 1975 amendment added subdivision (1)(e); and substituted "may be suspended" for "shall be suspended" in subsection (4).

DECISIONS UNDER FORMER LAW

Appeal from District Court

An order sustaining demurrer to two counts of an accusation under former section 94-5516 was not appealable without a judgment entered thereon, and where trial judge sustained demurrer, then disqualified himself and called in another judge, the successor judge should have entered judgment on the two counts in order to make a final determination which would be appealable. State ex rel. King v. District Court, 95 M 400, 26 P 2d 966.

County Attorney Accused

When an accusation is filed against a county attorney, the district court may appoint another attorney, including a county attorney from a nonadjoining county, to prosecute the accusation, but the prosecuting attorney is not entitled to compensation from the county for his services. State ex rel. McGrade v. District Court, 52 M 371, 157 P 1157.

Dealing in Warrants

Police captain could be removed from office for purchase and redemption of a

city warrant in violation of section 59-504, and it was no defense that the purchase was made on behalf of a fellow officer. State ex rel. O'Brien v. Mayor of Butte, 54 M 533, 172 P 134.

Disqualification of Judge

Proceeding under former section 94-5516 for removal of an officer from office was criminal rather than civil in nature, so section 93-901, relating to disqualification of the judge by affidavit, did not apply. State ex rel. Houston v. District Court, 61 M 558, 202 P 756.

Fees Charged

The term "fees" used in former section 94-5516 was broad enough to include both the per diem and reimbursable expenses of a county commissioner. State ex rel. Payne v. District Court, 53 M 350, 165 P 294; State v. Story, 53 M 537, 165 P 748.

Former section 94-5516, in so far as it related to unlawful fees, was restricted to fees "for services rendered . . . in his office," so that accusation that county commissioner received fees for attending a convention did not come within the section where it was shown that another commissioner was authorized to attend and thus that defendant's attendance was not "in his office." State ex rel. King v. Smith, 98 M 171, 38 P 2d 274.

Good Faith

Former section 94-5516, before the 1917 amendment, did not require a showing that the exaction of unauthorized fees was knowingly made, and it was no defense that the officer charged the fees in good faith and in reliance on the attorney general's advice. State ex rel. Rowe v. District Court, 44 M 318, 119 P 1103.

County commissioner charged with receiving illegal fees for supervising road work was virtually deprived of good faith defense allowed by former section 94-5516, after the 1917 amendment, by admission of evidence of attorney general's opinions holding such fees unlawful and of conversations with the county attorney, together with instructions that the attorney general and county attorney were the commissioner's legal advisers and that ignorance of the law was no excuse. State v. Russell, 84 M 61, 274 P 148.

The 1917 amendment of former section 94-5516 allowing the good faith defense to officers accused of receiving illegal fees established the public policy of the state, and the governor should have heard evidence on such defense before removing officers removable by him only for cause. State ex rel. Holt v. District Court, 103 M 438, 63 P 2d 1026.

Evidence that county surveyor acted

with knowledge of members of county airport board and on advice of state examining officer in filing claim under another name for services for which he could not have been paid in his own name tended to establish the good faith defense allowed by the 1917 amendment to former section 94-5516. State v. Hale, 126 M 326, 249 P 2d 495.

Misfeasance and Malfeasance

Accusations charging school board members with selecting a school site and erecting a building without submitting the matter to the electors, with employing an uncertified teacher, and with issuing warrants not authorized by the county superintendent, charged affirmative acts rather than nonfeasance, and could be brought only under former section 94-5502, which required accusation by grand jury and trial by jury, rather than under former section 94-5516. State ex rel. Hessler v. District Court, 64 M 296, 209 P 1052.

Accusation that sheriff actively participated in offenses involving bribery charged malfeasance in office and, where not properly brought under former section 94-5502, was subject to dismissal even though joined with other counts properly brought under former section 94-5516. State ex rel. Beazley v. District Court, 75 M 116, 241 P 1075.

In prosecution of sheriff under former section 94-5516 for nonfeasance in not arresting and instituting proceedings against one who offered a bribe, where the evidence showed that the sheriff actively solicited and received bribes but the accusation had not been brought by the grand jury as required by former section 94-5502, the court lost jurisdiction and should have dismissed the charge. State on Accusation of McNaught v. Beazley, 77 M 430, 250 P 1114.

Neglect of Mandatory Duty

Sheriff could be convicted and removed from office under former section 94-5516 for failure to take any steps to dispel a riot and for failure to attempt to serve bench warrants issued by district court. State v. Driscoll, 49 M 558, 144 P 153.

Police captain could be removed from office for failure for three years to file bond required. State ex rel. O'Brien v. Mayor of Butte, 54 M 533, 172 P 134.

Accusation that sheriff failed to arrest and institute proceedings against one who offered him a bribe charged nonfeasance, rather than misfeasance or malfeasance, and could be brought under former section 94-5516. State ex rel. Beazley v. District Court, 75 M 116, 241 P 1075.

Former section 94-5516, after the 1917 amendment, required that neglect of duty be willful before it would constitute

ground for removal from office, and an accusation that failed to allege willfulness should be dismissed. State ex rel. Arnot v. District Court, 155 M 344, 472 P 2d 302.

Pleadings

Accusation listing fees received by a county commissioner which were unlawful on their face was sufficient. State ex rel. Payne v. District Court, 53 M 350, 165 P 294, distinguished in 155 M 344, 348, 472 P 2d 302, 304.

Accusation against county commissioner for collecting illegal fees that quoted a number of items of per diem, mileage and expenses without specifying which portions of which items were excessive or unlawful did not sufficiently apprise defendant of the charges against him and was therefore properly dismissed on special demurrer. State ex rel. King v. Smith, 98 M 171, 38 P 2d 274.

Prosecution by Attorney General

When the attorney general petitions for the removal of a county officer, he is acting in behalf of the public and even though the prosecution is unsuccessful, the county rather than the attorney general personally is liable for witness fees. Griggs v. Glass, 58 M 476, 193 P 564.

Survival of Action

Action did not abate on death of officer pending appeal from judgment ousting him from office under former section 94-5516, since the question of his entitlement to the per diem and fees in question, as well as other emoluments accrued since the judgment of ouster, still remained. State v. Russell, 84 M 61, 274 P 148.

Time for Trial

Accused officer was entitled to dismissal of accusation under former section 94-5516 when it had not been brought to trial within the forty days allowed by that section, even where accused had demanded jury trial under the 1917 amendment. State ex rel. Galbreath v. District Court, 108 M 425, 91 P 2d 424.

Trial by Judge

Former section 94-5516, providing for removal from office in certain instances, was quasi-criminal in nature, so that the officer was entitled to have his case adjudicated by the trial judge, and supreme court would not issue mandamus requiring his removal on the trial judge's findings. State ex rel. Rowe v. District Court, 44 M 318, 119 P 1103.

Since former section 94-5516 provided for no penalty other than removal from office, there was no right to trial by jury except as provided in that section, even though the proceeding was criminal in nature, and a prosecution for neglect of mandatory duty was properly triable by the judge alone. State ex rel. Bullock v. District Court, 62 M 600, 205 P 955.

Value Received

Under clause in former section 94-5516 permitting officer charged with collecting illegal fees to show the value received by the public body from his services, it was error to exclude evidence of the amounts county would have had to pay by contract to have done the road work for which the officer, a county commissioner, was accused of having received unauthorized fees. State v. Russell, 84 M 61, 274 P 148.

Part 5

Treason, Flags and Related Offenses

94-7-501. [None.]

Compiler's Notes

Chapter 513, Laws of 1973, contained no section 94-7-501.

94-7-502. Desecration of flags. (1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

- (a) publicly mutilates, defiles, or casts contempt upon the flag; or
- (b) places on or attaches to the flag any work, mark, design, or

advertisement not properly a part of such flag or exposes to public view a flag so altered; or

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

History: En. 94-7-502 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Minnesota Criminal Code, section 609.40.

Commission Comment

The section is not intended to prevent giving away flags to customers of a busi-

ness enterprise as a patriotic gesture or placing the names of donors on flags by the Red Cross. United States Code, Title 36, Sections 170 and 171 and subsequent sections prescribe the formalities of using and displaying the flag on various occasions.

94-7-503. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime or malicious damage or injury to property, or violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing advocates or promotes the doctrine of criminal syndicalism; or

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another who purposely thereby to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays, any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed ten (10) years.

(4) Whoever, being the owner or in possession or control of any premises knowingly permits any assemblage of persons to use such premise for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months; or both.

History: En. 94-7-503 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Minnesota Statutes Annotated, section 609.405.

Commission Comment

The intent of the provision is to provide a more concise statute to deal with

those social elements which advocate violence, subversion and destruction by (1) eliminating the cumbersome and convoluted language found in the old sedition statute (R. C. M. 1947, section 94-4401) and (2) modernizing the statute for application to present social needs.

There can be little doubt that the

former sedition statute is obsolete. The statute was derived from the Espionage Act of 1917, as amended. (40 Stat. 553) The amended language provided a more detailed delineation of acts causing the offense and broadened immensely the scope of activity that could be included therein. The amendment was passed exclusively as a wartime measure. In upholding the constitutionality of the section, Justice Holmes said in *Schenck v. United States*, 249 US 47, 52, 63 L Ed 470, 39 S Ct 247 (1919) "When a nation is at war, many things that might be said in time of peace are such a hinderance to its effect that those utterances will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right." The Congress of the United States, in keeping with the intent of the section as a wartime measure, repealed it in 1921 (41 Stat. 1395, 1360) and replaced it with the original act. This, in turn, was repealed in 1948 (62 Stat. 862). The former Montana statute was directly derived from the 1918 amendment to the Espionage Act of 1917. In spite of the federal government's use of the language as a wartime provision, the statute remained intact in Montana for nearly half a century. There is an additional reason for repealing the former sedition statute. In

Commonwealth of Pennsylvania v. Nelson, 350 US 497, 100 L Ed 640, 76 S Ct 477 (1955) Chief Justice Warren, writing for the majority stated, "The Congress determined in 1940 that it was necessary for it to re-enter the field of antisubversive legislation which it had abandoned in 1921. In that year it enacted the Smith Act which proscribed advocacy of the overthrow of any government — federal, state or local—by force and violence and organization of and knowing membership in a group which so advocates." Referring further to the Internal Security Act of 1950 (50 U.S.C. § 781 et seq.), Warren went on to say, "We examine these Acts only to determine the congressional plan. Looking to all of them in the aggregate, the conclusion is inescapable that Congress has intended to occupy the field of Sedition. Taken as a whole, they evince a congressional plan which makes it reasonable to determine that no room has been left for the states to supplement it. Therefore, a state sedition statute is superseded regardless of whether it purports to supplement the federal law." The opinion also stated that "enforcement of state sedition acts presents a serious danger of conflict with the administration of the federal program."

94-7-504. Bringing armed men into the state. (1) A person commits the offense of bringing armed men into the state when he knowingly brings, or aids in bringing, into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed ten (10) years.

History: En. 94-7-504 by Sec. 1, Ch. 513, L. 1973.

Source: Derived from Revised Codes of Montana 1947, sections 94-3524 and 94-3920.

Commission Comment

This is intended to deal with those individuals who would bring criminal and politically adverse elements into Montana to carry on criminal or socially disruptive activities, or to take over duties of law enforcement authorities.

CHAPTER 8

OFFENSES AGAINST PUBLIC ORDER

Part 1—Offensive, Indecent and Inhumane Conduct

Section 94-8-101.	Disorderly conduct.
94-8-102.	Failure of disorderly persons to disperse.
94-8-103.	Riot.
94-8-104.	Incitement to riot.
94-8-106.	Cruelty to animals.
94-8-107.	Public nuisance.
94-8-108.	Creating a hazard.
94-8-109.	Failure to yield party line.

OFFENSES AGAINST PUBLIC ORDER

- 94-8-110. Obscenity.
- 94-8-110.1. Public display of offensive sexual material.
- 94-8-110.2. Contraceptive drugs or devices.
- 94-8-110.3. Certain motion picture theater employees not liable for prosecution.
- 94-8-111. Criminal defamation.
- 94-8-112. Bribery in contests.
- 94-8-113. Mistreating prisoners.
- 94-8-114. Privacy in communications.

Part 2—Weapons

- 94-8-201. Machine guns—definitions.
- 94-8-202. Possession or use of machine gun—when unlawful.
- 94-8-203. Punishment for possession or use of machine gun for offensive purpose.
- 94-8-204. Presumption of possession or use for offensive or aggressive purpose.
- 94-8-205. Presence of gun as evidence of possession or use.
- 94-8-206. Exceptions.
- 94-8-207. Manufacturer to keep register of machine guns—contents—inspection—penalty for failure to keep.
- 94-8-208. Registration of machine guns now in state and hereafter acquired—presumption from failure to register.
- 94-8-209. Uniformity of interpretation.
- 94-8-210. Carrying certain concealed weapons in cities or towns forbidden—punishment.
- 94-8-211. Carrying certain concealed weapons outside of cities or towns forbidden—punishment.
- 94-8-212. Carrying certain concealed weapons outside of cities or towns forbidden—punishment—who excepted from act.
- 94-8-213. Possession of weapon by prisoner.
- 94-8-214. Concealed weapons—district judge may issue permits to carry.
- 94-8-215. Definition of concealed weapons.
- 94-8-216. Definition of unincorporated town.
- 94-8-217. Jurisdiction of courts.
- 94-8-218. Firing firearms.
- 94-8-219. When Montana residents may purchase rifles or shotguns in contiguous states.
- 94-8-220. When residents of contiguous state may purchase rifles or shotguns in Montana.
- 94-8-221. Firearms—use of by children under the age of fourteen years prohibited.
- 94-8-222. Liability of parent or guardian.
- 94-8-223. Sale or manufacture of Maxim silencers and various explosives for wrongful use a felony.
- 94-8-224. Sale and manufacture of Maxim silencers and various explosives for wrongful use a felony—who are principals.
- 94-8-225. Sale and manufacture of Maxim silencers and various explosives for wrongful use a felony—possession presumptive evidence of what.
- 94-8-226. Switchblade knives—possession, selling, using, giving, or offering for sale—penalty—collectors.

Part 3—Lotteries

- 94-8-301. Lottery defined.
- 94-8-302. Drawings for prizes or premiums not contemplated by act, when.
- 94-8-303. Punishment for drawing lottery.
- 94-8-304. Punishment for selling lottery tickets.
- 94-8-305. Aiding lotteries.
- 94-8-306. Lottery offices—advertising lottery offices.
- 94-8-307. Insuring lottery tickets—publishing offers to insure.
- 94-8-308. Property offered for disposal in lottery forfeited.
- 94-8-309. Letting building for lottery purposes.
- 94-8-310. Lotteries out of this state.
- 94-8-311. Punishment.

Part 4—Gambling

- 94-8-401. Gambling games prohibited—penalty—license fees for card tables.

- 94-8-402. Licenses—application—expiration.
- 94-8-403. Organizations excluded from act.
- 94-8-404. Possession of gambling implements prohibited.
- 94-8-405. Obtaining money by means of gambling games or tricks deemed to be larceny.
- 94-8-406. Brace and bunco games prohibited.
- 94-8-407. Soliciting or persuading persons to visit gambling resorts prohibited.
- 94-8-408. Penalty for second offense.
- 94-8-409. Maintaining gambling apparatus a nuisance.
- 94-8-410. Duty of public officer to seize gambling implements and apparatus.
- 94-8-411. Duty of magistrate to retain gambling implement or apparatus for trial.
- 94-8-412. Disposal of moneys confiscated by reason of violation of gambling laws.
- 94-8-413. Authority to break and enter buildings where games are probably being played.
- 94-8-414. Duty of public officer to make complaint.
- 94-8-415. Duty of mayors to enforce law.
- 94-8-416. Officers neglecting duty subject to forfeiture of office.
- 94-8-417. Receiving money to protect offenders prohibited.
- 94-8-418. Losses at gambling may be recovered in civil action.
- 94-8-419. Action may be brought by any dependent person.
- 94-8-420. Pleadings in actions to recover moneys lost.
- 94-8-421. Compelling testimony in such actions.
- 94-8-422. Lessor of buildings used for gambling purposes treated as principal.
- 94-8-423. Immunity of witnesses.
- 94-8-424. Ordinances in conflict with this act void.
- 94-8-425. Who deemed a principal.
- 94-8-426. Violation of act a misdemeanor.
- 94-8-427. Act, when effective.
- 94-8-428. Slot machines—possession unlawful.
- 94-8-429. Slot machine defined.
- 94-8-430. Person or persons defined.
- 94-8-431. Penalty for possession or permitting use of slot machine.

Part One

Offensive, Indecent and Inhumane Conduct

94-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

- (a) quarreling, challenging to fight or fighting; or
- (b) making loud or unusual noises; or
- (c) using threatening, profane or abusive language; or
- (d) discharging firearms; or
- (e) rendering vehicular or pedestrian traffic impassable; or
- (f) rendering the free ingress or egress to public or private places impassable; or
- (g) disturbing or disrupting any lawful assembly or public meeting; or
- (h) transmitting a false report or warning of a fire, impending explosion or other catastrophe in such a place that its occurrence would endanger human life; or
- (i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(2) A person convicted of the offense of disorderly conduct shall be fined not to exceed one hundred dollars (\$100) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

There appeared to have been no distinct crime known as disorderly conduct at common law. Some of the acts now included by statute in this category fell under the general heading of breaches of the peace such as fighting or causing a disturbance which would tend to provoke fighting among those present.

In many jurisdictions statutes have developed which go beyond merely preventing breaches of the peace. Included generally are acts which offend others or annoy them or create resentment without necessarily leading to a breach of peace. The crime of disorderly conduct appears to be directed at curtailing that kind of behavior which disrupts and disturbs the peace and quiet of the community by

various kinds of annoyances. These acts standing alone may not be criminal under other categories such as theft, or assault and battery, or libel, etc. The difficulty is in defining the conduct which falls within these objectives, for a given act under some circumstances is not objectionable, while under others it is. Thus sounding a horn at a carnival is not objectionable. But sounding it at midnight in a residential section might be. The intent of the provision is to use somewhat broad, general terms to establish a foundation for the offense and leave the application to the facts of a particular case. Two important qualifications are specified in making the application, however. First, the offender must knowingly make a disturbance of the enumerated kind, and second, the behavior must disturb "others." It is not sufficient that a single person or a very few persons have grounds for complaint.

DECISIONS UNDER FORMER LAW

Disturbing the Peace

Evidence that defendant was slapping his pistol against his leg in an agitated manner, that he unholstered the weapon and pointed it at another and threatened

to shoot him and that he spat at that person's departing automobile was sufficient to support conviction of disturbing the peace. *State v. Turley*, — M —, 521 P 2d 690.

94-8-102. Failure of disorderly persons to disperse. (1) Where two (2) or more persons are engaged in disorderly conduct, a peace officer, judge or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed one hundred dollars (\$100) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both.

History: En. 94-8-102 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

State statutes commonly penalize refusal to disperse when ordered to do so by those in authority and present at the

scene of an unlawful assembly. The elements of the offense are that at least two persons be involved and that the group members must purposely refuse or fail to disperse when they are ordered to do so by an official of the law or one given authority by law.

DECISIONS UNDER FORMER LAW

Civil Liability

Former sections 94-5304 and 94-5305, requiring the sheriff to command rioters to disperse and to arrest those who do not

disperse, did not impose civil liability on the sheriff for damages sustained because of his neglect of this duty. *Annala v. McLeod*, 122 M 498, 206 P 2d 811.

94-8-103. Riot. (1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five (5) or more persons, which act or threat presents a clear and present danger of, or results in, damage to property or injury to persons.

(2) A person convicted of the offense of riot shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-8-103 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The common-law misdemeanor, "unlawful assembly," was a gathering of three or more persons with the common purpose of committing an unlawful act. When an act was done toward carrying out this pur-

pose, the offense was "riot." The actual beginning of the perpetration of the unlawful act became "riot." All states penalize some form of unlawful assembly or riot. The section follows the common law with the exception of the number of people involved and the inclusion of the language "purposely and knowingly," which is the standard mens rea requirement in the code.

94-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas, or expression of belief, which advocacy or expressions does not urge the commission of an act of immediate violence.

(2) A person convicted of the offense of incitement to riot shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-8-104 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section introduces a new concept to the Montana Criminal Code. The intent of the section is to specifically define an offense which might otherwise be covered in another part of the code.

It is conceivable that an act constituting incitement to riot would be covered under the inchoate offense of solicitation. However, with the increase in the general social upheaval in many jurisdictions, a

single statute specifically prohibiting incitement to riot might provide more effective law enforcement. Preventing a riot before substantial injury to property and persons has occurred is the only practical method of dealing with such social unrest, for after the substantive offenses are committed, and a riot is in progress, normal law enforcement procedures are generally unworkable and the tactics used by enforcement officials to restore order often extend beyond that which may be considered a reasonable use of force under the circumstances.

94-8-105. Repealed.

Repeal

Section 94-8-105 (Sec. 1, Ch. 513, L.

1973), relating to public intoxication, was repealed by Sec. 4, Ch. 403, Laws 1975.

94-8-106. Cruelty to animals. (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring or killing any animal; carrying any animal in a cruel manner; or

(b) failing to provide an animal in his custody with proper food, drink, or shelter; or

(c) abandoning any helpless animal or abandoning any animal on any highway, railroad or in any other place where it may suffer injury, hunger or exposure or become a public charge; or

(d) promoting, sponsoring, conducting or participating in a horse race of more than two (2) miles; or promoting, sponsoring, or conducting or participating in any fight between any animals.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-8-106 by Sec. 1, Ch. 513, L. 1973.

Source: Derived from the proposed Michigan Code, section 5565; also derived from Model Penal Code, section 250.11.

Commission Comment

Subdivision (1)(c) covers instances in which a person knowingly and negligently releases or abandons a wild or semi-wild animal in a populated area where it will not be able to fend for itself.

94-8-107. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons; or

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage, any public highway or right of way, or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood, or any considerable number of persons (as specified in subsection (1) (a) of this section), is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) A person convicted of maintaining a public nuisance shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both. Each day of such conduct constitutes a separate offense.

(5) Action to abate a public nuisance.

(a) Every premise upon which a public nuisance is being maintained may be abated, and the persons maintaining such nuisance and the possessor who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney, or any resident of the state.

(b) Upon the filing of the complaint in such action the judge may issue a temporary injunction.

(c) In such action evidence of the general reputation of the premises shall be admissible for the purpose of proving the existence of such nuisance.

(d) If the existence of the nuisance be established an order of abatement shall be entered as part of the judgment in the case. The judge issuing such order may, in his discretion:

(i) confiscate all fixtures used on the premises to maintain the nuisance

and either sell them and transmit the proceeds to the county general fund, or destroy them or return them to their rightful ownership; or

(ii) close the premises for any period not to exceed one (1) year and during such period the premises shall remain in the custody of the court; or

(iii) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture and/or discharge of the bond shall be as provided in section 95-1116.

(iv) any combination of the above.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

The phrase "any considerable number of persons" as used in the provision will undoubtedly be subject to court interpretation. The phrase has not been interpreted by any Montana case to date. The New York Court of Appeals held that "The expression 'any considerable number of persons' is used solely for the purpose of differentiating a public nuisance, which is subject to indictment, from a private nuisance. But a considerable number of persons does not necessarily mean a very great or any particular number of persons." *People v. Kings County Iron Foundry*, 209 NY 530, 102 NE 598, 599 (1913).

The offense of "nuisance," in some ways, resembles disorderly conduct in its requirement that the proscribed conduct annoy, alarm or inconvenience the public

or "a considerable number of persons" however disorderly conduct relates to existing acts or acts of brief duration while nuisance usually involves the creation or maintenance of a continuing condition. In practical application, most criminal nuisance cases fall into two categories: (1) the maintenance of manufacturing plants, entertainment resorts and the like, which by virtue of excessive noise, noxious gases, etc., annoy or offend groups or areas of the community; and (2) the conduct of resorts where people gather for illegal or immoral purposes. Subdivision (1)(a) deals with the first category. One difficulty of this offense is the fine balancing of the relative rights of plant operators or business people on the one hand and the residents of the vicinity on the other. The problem is accentuated by the fact that "public nuisance," as defined and construed, requires little if any criminal intent, being virtually a crime of absolute liability.

DECISIONS UNDER FORMER LAW

Burden of Proof

An action in equity to abate a nuisance initiated under former section 94-1003 was a civil action and the burden resting on the state was proof by a preponderance of the evidence only. *State ex rel. Lamey v. Young*, 72 M 408, 234 P 248.

Where the evidence overwhelmingly established gambling activities on the premises and there was virtually no contradictory evidence, supreme court would reverse judgment dismissing action to abate nuisance and would direct entry of judgment of abatement, including a perpetual injunction against use of premises for gambling. *State ex rel. Nagle v. Naughton*, 103 M 306, 63 P 2d 123.

Closing of Premises

Closing of an entire three-story building was justified on evidence that previous lesser attempts to abate unlawful activities had failed and that the operation of all parts of the building were connected with the unlawful activities. *State ex rel. Lamey v. Young*, 72 M 408, 234 P 248.

Where stipulated facts established that gambling operations had been conducted on premises in violation of perpetual injunction ordered by supreme court thirteen years before, but sheriff's return reported that he found no gambling equipment there, order would be entered closing premises for a year and restraining defendants from removing any gambling equipment. *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029.

Complaint

Complaint initiating an action in equity under former section 94-1003 was sufficient if verified as required by that section, and it was not necessary that it comply with the requirements of section 93-4205 that the allegations be made positively, rather than on belief, as required for temporary injunction in other types of cases. *State ex rel. Bergland v. Bradley*, 124 M 434, 225 P 2d 1024.

Destruction of Property

Order directing sheriff to sell equipment confiscated was erroneous where such

equipment was gambling equipment of the type described in section 94-8-404, since under section 94-8-411 such equipment is to be destroyed. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988.

Good Faith

Defendants could not plead good faith compliance with unconstitutional statute purporting to authorize certain types of lotteries when they had not paid the tax or license fees required by those same statutes; in any event, good faith was relevant only in applying for release of the premises for lawful use. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

Order of Abatement

Order abating nuisance was not required, as a prerequisite or concurrent with closing of the premises, to order confiscation of the fixtures. State ex rel. Lamey v. Young, 72 M 408, 234 P 248.

Trial court should have included in the order abating a nuisance and confiscating equipment a description of the fixtures and equipment confiscated, and where there was evidence as to the equipment used in illegal activities, it was immaterial that the complaint did not describe it. State ex rel. Bottomly v. Johnson, 116 M 483, 154 P 2d 262.

An order closing the premises and ordering confiscation of personal property was a final judgment and could not be entered while a motion to strike portions of the complaint was still pending. State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142.

Parties Defendant

Owner of building could not complain that a particular lessee of part had not been made a party to abatement action initiated under former section 94-1003. State ex rel. Lamey v. Young, 72 M 408, 234 P 248.

Parties Plaintiff

The fact that the nominal complainant in an abatement action under former section 94-1003 was an attorney and had been paid by an undisclosed person to file the

action and testify as a witness was not ground for questioning his motives or the credibility of his testimony. State ex rel. Leahy v. O'Rourke, 115 M 502, 146 P 2d 168.

Permitting Nuisance

Finding that the owner of a place knew of and permitted unlawful conduct therein was justified by evidence of its general reputation for gambling and unlawful sale of liquor, that owner knew of several arrests for unlawful activities and on one occasion assumed responsibility for persons arrested, that owner leased to persons previously involved in illegal activities, and that on learning of violations, owner failed to terminate leases immediately but merely failed to renew when the leases expired several months later. State ex rel. Lamey v. Young, 72 M 408, 234 P 248.

Reputation Evidence

Testimony as to the general reputation of a place was admissible in an abatement action initiated under former section 94-1003 and tended directly to prove knowledge on the part of the owner. State ex rel. Lamey v. Young, 72 M 408, 234 P 248.

Temporary Injunction

Under former section 94-1004, the district court was required, on a prima facie showing of unlawful gambling on the premises, to issue a temporary injunction which should be effective at least until the hearing on the order to show cause, and an order quashing the temporary injunction before that time was appealable. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307.

Unlawful Conduct

Gambling, prostitution and unlawful sale of liquor were proper grounds for an abatement action initiated under former section 94-1003. State ex rel. Lamey v. Young, 72 M 408, 234 P 248.

Former section 94-1002, defining nuisances, was designed to include lotteries, as defined by section 94-8-301, as well as other forms of gambling. State ex rel. Leahy v. O'Rourke, 115 M 502, 146 P 2d 168.

94-8-108. Creating a hazard. (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children, a container having a compartment of more than one and one-half (1½) cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside, and fails to remove the door, lid, or locking or fastening device; or

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft or other hole of a depth of four (4) feet or more and a top width of twelve (12) inches or more, and he fails to cover or fence it with a suitable protective construction; or

(c) tampers with an aircraft without the consent of the owner; or

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, he continues to use a steam engine or steam boiler which is in an unsafe condition; or

(e) being a person in the act of game hunting, he acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks, which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. 94-8-108 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as proposed Michigan Code, section 7505.

Commission Comment

The section is designed primarily to protect children, unsuspecting or handicapped adults and injured hunting victims.

In addition it deals with several unrelated and somewhat unique problems in imposing criminal liability on aircraft meddlers, railroad derailleurs and possessors of steam engines or steam boilers. The mens rea requirement for each offense is "knowingly" and the penalty is a misdemeanor only.

DECISIONS UNDER FORMER LAW

Civil Liability

Failure to put a cover over or a fence around an open shaft as required by former section 94-35-125 was negligence per se and made the landowner liable for injuries sustained in a fall even by a trespasser. *Conway v. Monidah Trust*, 47 M 269, 132 P 26.

Trench

Former section 94-35-125 did not apply to a temporary trench opened for the laying of sewer pipe, even though more than ten feet deep. *McLaughlin v. Bardsen*, 50 M 177, 145 P 954.

94-8-109. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department, or for medical aid or ambulance service, shall be imprisoned for a term not to exceed ten (10) days or fined not to exceed twenty-five dollars (\$25), or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question, or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call knowing such pretext to be false, shall be imprisoned for a term not to exceed ten (10) days or fined not to exceed twenty-five dollars (\$25), or both.

(4) Every telephone company doing business in this state shall print a copy of subsections (1), (2) and (3) of this section in each telephone directory published by it after the effective date of this section.

History: En. 94-8-109 by Sec. 1, Ch. 513, L. 1973.

Commission Comment

This section is a recodification of old laws dealing with party lines.

Source: Substantially the same as Revised Codes of Montana 1947, sections 94-35-221.1, 94-35-221.2, 94-35-221.3 and 94-35-221.4.

94-8-110. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene to anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) it is a representation or description of perverted ultimate sexual acts, actual or simulated, or

(b) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated, or

(c) it is a patently offensive representation or description of masturbation, excretory functions or lewd exhibition of the genitals, and

(d) taken as a whole the material:

(i) applying contemporary Montana standards, appeals to the prurient interest in sex,

(ii) portrays conduct described in (a), (b), or (c) above in a patently offensive way, and

(iii) lacks serious literary, artistic, political or scientific value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined at least five hundred dollars (\$500) but not more than one thousand dollars (\$1,000), or imprisoned in the county jail for a term not to exceed six (6) months, or both.

(5) No city or municipal ordinance may be adopted which is more restrictive as to obscenity than the provisions of this section and section 94-8-110.1.

History: En. 94-8-110 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 407, L. 1975.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 11-20.

Commission Comment

This section closely follows section 11-20 of the Illinois Criminal Code, which is essentially the same as the American Law Institute Model Penal Code Draft. Slight changes in wording were undertaken in recognition that today's society often condones literature, movies and other art which may incidentally provide erotic stimulation. The significant difference between this section and the prior provisions is that a violation cannot occur unless the obscene art is specifically directed to a person under the age of majority with the exception of subdivision (1)(f) which is

aimed at "pandering", using its common definition.

Amendments

The 1975 amendment rewrote subsection (2) which read: "A thing is obscene if: (a) the dominant theme of the material taken as a whole appeals to a prurient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value"; substituted "at least five hundred dollars (\$500) but not more than one thousand dollars (\$1,000)" in subsection (4) for "not to exceed five hundred dollars (\$500)"; added subsection (5); and made a minor change in phraseology.

94-8-110.1. Public display of offensive sexual material. (1) A person is guilty of public display of offensive sexual material when, with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, marquee or similar place, any pictorial, three-dimensional or other visual representation of a person or a portion thereof of the human body that predominantly appeals to prurient interest in sex, and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors; and does not

(a) separate that material by an opaque structure from other materials displayed, and

(b) establish, by official identification, that each person viewing the displayed material is at least eighteen (18) years of age.

(2) A theater may not display previews or projections advertising or promoting motion pictures if such previews or projections contain a display of offensive sexual material and if minors are permitted to attend the showing of the motion picture then being featured.

(3) A drive-in movie screen may not display any material prohibited

OFFENSIVE, INDECENT AND INHUMANE CONDUCT 94-8-110.2

by this section in such manner that the display is easily visible from any public street, sidewalk, thoroughfare or transportation facility.

(4) A person convicted of the public display of offensive sexual material shall be fined at least five hundred dollars (\$500) but not more than one thousand dollars (\$1,000), or imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. Secs. 1 to 3, Ch. 463, L. 1973; R. C. M. 1947, Supp., Secs. 94-3624 to 94-3626; amd. Sec. 2, Ch. 407, L. 1975.

Compiler's Notes

This section was not a part of the Criminal Code of 1973, but is derived from a separate 1973 act. The compiler has placed the section here in the interest of logical arrangement and, in so doing, has inserted subsection designations in the style used in the Criminal Code of 1973.

Title of Act

An act prohibiting the public display of offensive sexual material, with definition of terms; and providing for a penalty.

Amendments

The 1975 amendment deleted "drive-in movie screen" after "billboard" in subsection (1); deleted "in such manner that the display is easily visible from or in any public street, sidewalk, or thoroughfare or transportation facility" after "marquee or similar place" in subsection (1); added

"and does not" and subdivisions (a) and (b) to subsection (1); inserted subsection (3); designated former subsection (3) as (4); and increased the fine in subsection (4) from "not to exceed five hundred dollars (\$500)" to "at least five hundred dollars (\$500) but not more than one thousand dollars (\$1,000)."

Separability Clause

Section 4 of Ch. 463, Laws 1973 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

Effective Date

Section 3 of Ch. 407, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 14, 1975.

94-8-110.2. Contraceptive drugs or devices. (1) It shall be unlawful for any person, firm, corporation, copartnership or association to sell, offer for sale, give away, through the medium of vending machines, personal or collective distribution, by solicitation, peddling or in any other manner whatsoever contraceptive drugs or devices, prophylactic rubber goods or other articles for the prevention of venereal diseases. The foregoing provisions shall not apply to regularly licensed practitioners of medicine, osteopathy or other licensed persons practicing other healing arts, and registered pharmacists, nor to wholesale drug jobbers or manufacturers who sell to retail stores only.

(2) It shall be unlawful to exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place other than in the place of business of a licensed pharmacist, or to advertise such in any magazine, newspaper or other form of publication, originating in, or published within the state of Montana; to publish, or distribute from house to house or upon the streets, any circular, booklet or other form of advertising, or by other visual means, or by auditory method or by radio broadcast; or by the use of outside signs on stores, billboards, window displays or other advertising visible to persons upon the streets or public highways; provided, however, that nothing in this act shall prevent the advertising of prophylactics or contraceptives in the trade press of those magazines whose principal circulation is to the medical and pharmaceutical

professions; or to those magazines and other publications having interstate circulation, originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation; nor to the furnishing within the store or place of business of a licensed pharmacist, to persons qualified to purchase, and then only upon their inquiry such printed or other information as is requisite to proper use in relation to any merchandise coming within the provisions of this act [section].

Provided, nothing herein shall prevent the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this act.

(3) Any officer of the law shall have the power to cause the arrest of any person violating any provision of this act, to seize stocks illegally held, and to make seizure of any mechanical device or vending machine containing any merchandise coming within the provisions of this act, holding the owner of such machine, the occupier and the owner of the premises where seizure is made to be in violation of this act [section].

(4) Any person, or any member of a firm, or copartnership or the officers of a corporation or association who or which knowingly violates any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500), or by imprisonment of not to exceed six (6) months in the county jail, or both; provided, however, that the justice of the peace courts and the district courts of the state shall have concurrent jurisdiction in all prosecutions and causes arising under this act.

History: En. Secs. 1 to 4, Ch. 430, L. 1973; R. C. M. 1947, Supp., secs. 94-3620 to 94-3623.

Compiler's Notes

This section was not part of the Criminal Code of 1973, but is based on a separate 1973 act. The compiler has placed it here in the interest of logical arrangement and, in so doing, has inserted subsection numbers in the style used in the Criminal Code of 1973.

Title of Act

An act to be codified in chapter 15, Title 66, R. C. M. 1947, relating to the sale and advertisement of contraceptive drugs and devices; providing penalties; and repealing sections 94-3616, 94-3617, 94-3618 and 94-3619, R. C. M. 1947.

Repealing Clause

Section 5 of Ch. 430, Laws 1973 read "Sections 94-3616, 94-3617, 94-3618 and 94-3619, R. C. M. 1947, are repealed."

94-8-110.3. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed but does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under sections 94-8-110 and 94-8-110.1, R. C. M. 1947, or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture

provided the employee is acting within the scope of his regular employment at a showing open to the public.

History: En. 94-8-110.3 by Sec. 1, Ch. 76, L. 1974.

Title of Act

An act relating to motion picture theater employees and obscene motion pictures.

94-8-111. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(2) Whoever with knowledge of its defamatory character, orally, in writing or by any other means, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than six (6) months in the county jail or a fine of not more than five hundred dollars (\$500), or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends; or

(b) the communication is absolutely privileged; or

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two (2) other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

History: En. 94-8-111 by Sec. 1, Ch. 513, L. 1973.

Source: Identical to Minnesota Statutes Annotated, section 609.765.

Commission Comment

The law of criminal libel has been based upon two divergent, and often confused, policy considerations. The first is that personal reputations should be protected from injury by punishing the communication of

scandalous matter. The second is that breaches of the peace which might be caused by the publication of such matter can be avoided by punishing the publication. This section has the main function of preserving personal reputations by assimilating the nearly one dozen statutes now involved in present provisions, and by clearing up the traditionally confusing language associated with the statutes.

DECISIONS UNDER FORMER LAW

Public Officer

Statements leading to necessary inference that township constable had acted unlawfully in attachment, had formed a collusive partnership with a bill collector,

and had been guilty of graft in the administration of the affairs of his office was libelous within the meaning of former section 94-2801. State v. Winterrowd, 77 M 74, 249 P 664.

94-8-112. Bribery in contests. (1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another, or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating or connected with any professional or amateur athletic contest, sporting event or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed five thousand dollars (\$5,000) or be imprisoned in the state prison for a term not to exceed ten (10) years, or both.

History: En. 94-8-112 by Sec. 1, Ch. 513, L. 1973.

Source: Substantially the same as Illinois Criminal Code, Chapter 38, section 29-1.

Commission Comment

The bribery of a participant in a sporting event constitutes an activity sufficiently deceitful to warrant criminal sanctions. The purpose of this section is twofold. First, by preventing the offer and acceptance of bribes it attempts to protect the moral character of participants and officials from influence and corruption.

Second, through the use of criminal sanctions, the economic and psychological ill effects of "fixed" contests are sought to be avoided. The general phrase "failure to use his best efforts in connection with (a contest)" is intended to cover any conduct whereby a participant tries to lose the contest, lower the margin of victory, establish a point spread, etc., or, in the case of an official or other person, conduct whereby he deliberately misjudges, dishonestly referees or supervises, or otherwise unfairly attempts to influence the outcome of the contest. The section has no counterpart in the old Montana Criminal Code.

94-8-113. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner; or

(b) intimidates, threatens, endangers or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him, or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and imprisoned in the state prison for a term not to exceed ten (10) years.

History: En. 94-8-113 by Sec. 1, Ch. 513, L. 1973.

Source: New.

Commission Comment

This section replaces R. C. M. 1947, sections 94-3917, "Inhumanity to prisoners," and 94-3918, "Confessions obtained by duress or inhuman practices." The purpose of the section is to provide more concise terminology for offenses against prisoners. Thus, the terms "assault, intimidation, threat, endanger and withhold are clearer

and more meaningful than "inhumanity" or "inhuman practices."

The maximum punishment provided in the provision is ten (10) years and removal from office. The severe punishment is based on two premises: (1) the relatively helpless circumstance of a prisoner subjected to such treatment, and (2) the policy that a sentence to imprisonment should be rehabilitative in nature. Clearly, little rehabilitation or reorientation to social norms can be accomplished when those responsible for the custody and care of prisoners mistreat them.

94-8-114. Privacy in communications. (1) A person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) Communicates with any person by telephone with the intent to terrify, intimidate, threaten, harass, annoy or offend, or use any obscene, lewd or profane language or suggest any lewd or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person.

(b) Uses a telephone to attempt to extort money or any other thing of value from any person, or to disturb by repeated telephone calls the peace, quiet or right of privacy of any person at the place where the telephone call or calls were received. The use of obscene, lewd or profane language or the making of a threat or lewd or lascivious suggestions shall be prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy or offend.

(c) Records or causes to be recorded by use of any hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) shall not apply to duly elected or appointed public officials or employees when such transcription or recording is done in the performance of official duty; nor to persons speaking at public meetings or persons given warning of such recording.

(d) Attempts by means of any machine, instrument, contrivance, or in any other manner, reads, or attempts to read any message or learn the contents thereof, while the same is being sent over any telegraph line, or learns or attempts to learn the contents of any message, whilst the same is in any telegraph office or is being received thereat or sent therefrom, or who uses or attempts to use, or communicate to others, any information so obtained.

(e) Discloses the contents of a telegraphic message or any part thereof, addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court.

(f) Opens or reads or causes to be read any sealed letter not addressed to himself, without being authorized to do so by either the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letters knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating the privacy in communications shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months or both.

History: En. 94-8-114 by Sec. 1, Ch. 513, L. 1973.

Source: Derived from Revised Codes of Montana 1947, sections 94-3203, 94-3320, 94-3321, 94-3323, 94-35-220, 94-35-221.5, 94-35-274 and 94-35-275.

Commission Comment

This statute is merely a recodification of the old Montana law. A comprehensive electronic surveillance proposal was defeated by the 1971 state legislature.

Part Two

Weapons

94-8-201. (11317.1) Machine guns—definitions. "Machine gun" applies to and includes a weapon of any description by whatever name known,

loaded or unloaded, from which more than six shots or bullets may be rapidly, or automatically, or semiautomatically discharged from a magazine, by a single function of the firing device.

"Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnaping, rape, mayhem, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering, and larceny.

"Person" applies to and includes firm, partnership, association or corporation.

History: En. Sec. 1, Ch. 43, L. 1935; Sec. 94-3101, R. C. M. 1947; redes. 94-8-201 by Sec. 29, Ch. 513, L. 1973.

94-8-202. (11317.2) Possession or use of machine gun—when unlawful. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than twenty years.

History: En. Sec. 2, Ch. 43, L. 1935; Sec. 94-3102, R. C. M. 1947; redes. 94-8-202 by Sec. 29, Ch. 513, L. 1973.

94-8-203. (11317.3) Punishment for possession or use of machine gun for offensive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than ten years.

History: En. Sec. 3, Ch. 43, L. 1935; Sec. 94-3103, R. C. M. 1947; redes. 94-8-203 by Sec. 29, Ch. 513, L. 1973.

94-8-204. (11317.4) Presumption of possession or use for offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(a) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; or

(b) When in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or

(c) When the machine gun is of the kind described in section 94-8-208 and has not been registered as in said section required; or

(d) When empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof.

History: En. Sec. 4, Ch. 43, L. 1935; Sec. 94-3104, R. C. M. 1947; amd. and redes. 94-8-204 by Sec. 26, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-3104 in bound Volume Eight.

Amendments section 94-8-208 in subdivision (c) for a
The 1973 amendment renumbered this reference to section 94-3108.
section; and substituted the reference to

94-8-205. (11317.5) Presence of gun as evidence of possession or use. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

History: En. Sec. 5, Ch. 43, L. 1935;
Sec. 94-3105, R. C. M. 1947; redes. 94-8-205
by Sec. 29, Ch. 513, L. 1973.

94-8-206. (11317.6) Exceptions. Nothing contained in this act shall prohibit or interfere with:

1. The manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose;

2. The possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

3. The possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber, for a purpose manifestly not aggressive or offensive.

History: En. Sec. 6, Ch. 43, L. 1935;
Sec. 94-3106, R. C. M. 1947; redes. 94-8-206
by Sec. 29, Ch. 513, L. 1973.

94-8-207. (11317.7) Manufacturer to keep register of machine guns—contents—inspection—penalty for failure to keep. Every manufacturer shall keep a register of all machine guns manufactured or handled by him. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, parts, and supplies therefor, and shall produce the register, herein required, for inspection. A violation of any provision of this section shall be punishable by a fine of not less than one hundred dollars (\$100.00).

History: En. Sec. 7, Ch. 43, L. 1935;
Sec. 94-3107, R. C. M. 1947; redes. 94-8-207
by Sec. 29, Ch. 513, L. 1973.

94-8-208. (11317.8) Registration of machine guns now in state and hereafter acquired—presumption from failure to register. Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered in the office of the secretary of

state, on the effective date of this act, and annually thereafter. If acquired hereafter it shall be registered within twenty-four hours after its acquisition. Blanks for registration shall be prepared by the secretary of state, and furnished upon application. To comply with this section the application as filed must show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which, the gun was acquired. The registration data shall not be subject to inspection by the public. Any person failing to register any gun as required by this section, shall be presumed to possess the same for offensive or aggressive purpose.

History: En. Sec. 8, Ch. 43, L. 1935; Sec. 94-3108, R. C. M. 1947; redes. 94-8-208 by Sec. 29, Ch. 513, L. 1973.

Cross-References

Registration functions transferred to department of law enforcement, sec. 82A-1203.

94-8-209. (11317.10) Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 11, Ch. 43, L. 1935; Sec. 94-3110, R. C. M. 1947; redes. 94-8-209 by Sec. 29, Ch. 513, L. 1973.

94-8-210. (11302) Carrying certain concealed weapons in cities or towns forbidden—punishment. Every person who, within the limits of any city or town, carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, swordcane, billy, knuckles made of any metal or hard substance, knife having a blade four inches long or longer, razor, not including a safety razor, or other deadly weapon, shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment, or may be punished by imprisonment in the state penitentiary for a period not exceeding five years.

History: Earlier acts were Sec. 1, p. 62, L. 1883; re-en. Sec. 66, 4th Div. Comp. Stat. 1887; amd. Sec. 758, Pen. C. 1895; re-en. Sec. 8582, Rev. C. 1907; amd. Sec. 1, Ch. 58, L. 1911.

This section en. Sec. 1, Ch. 74, L. 1919; re-en. Sec. 11302, R. C. M. 1921; Sec. 94-3525, R. C. M. 1947; redes. 94-8-210 by Sec. 29, Ch. 513, L. 1973.

Permit

In assault prosecution based on use of a gun taken by defendant from his pocket, it was not error to instruct jury that it was crime to carry a concealed weapon without a permit, even in the absence of evidence that defendant did not have a permit; existence of a permit would have been an affirmative defense. *State v. Lewis*, 157 M 452, 486 P 2d 863.

94-8-211. (11303) Carrying certain concealed weapons outside of cities or towns forbidden—punishment. Every person who, without the limits of any city or town, carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, swordcane, billy, knuckles made of any metal or hard substance, knife having a blade four inches long or longer, razor, not including a safety razor not capable of being used as an ordinary razor, or other deadly weapon, shall be punished by imprisonment in the county jail for a term not less than six months nor more than one year, or by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by both such fine and imprisonment.

History: Earlier acts were Sec. 1, Ch. 35, L. 1903; re-en. Sec. 8583, Rev. C. 1907. This section en. Sec. 2, Ch. 74, L. 1919; re-en. Sec. 11303, R. C. M. 1921; Sec. 94-3526, R. C. M. 1947; redes. 94-8-211 by Sec. 29, Ch. 513, L. 1973.

94-8-212. (11304) Carrying certain concealed weapons outside of cities or towns forbidden—punishment—who excepted from act. The preceding sections shall not apply to:

1. A sheriff or his deputy;
2. A marshal or his deputy;
3. A constable or his deputy;
4. A police officer or policeman;
5. A United States marshal or his deputy;
6. A person in the secret service of the United States;
7. A game warden or his deputy;
8. A U. S. forest reserve official or his deputy;
9. A person in actual service as a national guardsman;
10. A revenue officer or his deputy;
11. A person summoned to the aid of either of the foregoing named persons;
12. A civil officer or his deputy engaged in the discharge of official business;
13. A person authorized by a judge of a district court of this state to carry a weapon;
14. The carrying of arms on one's own premises or at his home or place of business;
15. Any peace officer of the state of Montana;
16. United States immigration and naturalization service officer;
17. National park service rangers.

History: En. Sec. 3, Ch. 74, L. 1919; re-en. Sec. 11304, R. C. M. 1921; Sec. 94-3527, R. C. M. 1947; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971; redes. 94-8-212 by Sec. 29, Ch. 513, L. 1973.

Amendments

The 1971 amendment added item 17, relating to national park service rangers.

94-8-213. Possession of weapon by prisoner. Every prisoner committed to the Montana state prison, who, while at such state prison, or while being conveyed to or from the Montana state prison, or while at a state prison farm or ranch, or while being conveyed to or from any such place, or while under the custody of prison officials, officers or employees, possesses or carries upon his person or has under his custody or control without lawful authority, a dirk, dagger, pistol, revolver, slingshot, swordcane, billy, knuckles made of any metal or hard substance, knife, razor, not including a safety razor, or other deadly weapon, is guilty of a felony and shall be punishable by imprisonment in the state prison for a term not less than five (5) years nor more than fifteen (15) years. Such term of imprisonment to commence from the time he would have otherwise been released from said prison.

History: En. Sec. 1, Ch. 131, L. 1961; Sec. 94-3527.1, R. C. M. 1947; redes. 94-8-213 by Sec. 29, Ch. 513, L. 1973.

94-8-214. (11306) Concealed weapons—district judge may issue permits to carry. Any judge of a district court of this state may grant permission to carry or bear concealed or otherwise a pistol or revolver for a term not exceeding one year. All applications for such permission must be made by petition filed with the clerk of the district court, for the filing of which petition no charge shall be made. The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral character and peaceable disposition. No such permission shall be granted any person who is not a citizen of the United States and who has not been an actual bona fide resident of the state of Montana for six months immediately next preceding the date of such application. A record of permission granted shall be kept by the clerk of the court, which record shall state the date of the application, the date of the permission, the name of the person to whom permission is granted, the name of the judge granting the permission, the name of the person, if any, by whom good moral character and peaceable disposition are proved, and which record must be signed by person who is granted such permission. The clerk shall thereupon issue under his hand and the seal of the court a certificate, in a convenient card form so that the same may be carried in the pocket, stating:

“Permission to authorizing him to carry or bear concealed or otherwise a pistol or revolver for the period of from the date hereof, has been granted by, a judge of the district court of the judicial district of the state of Montana, in and for the county of

“Witness the hand of the clerk and the seal of said court this day of, 19.....

Clerk.”

The date of the certificate shall be the date of the granting of such permission. The certificate shall bear upon its face the signature of the person receiving the same. Upon good cause shown the judge granting such permission may, and in his discretion without notice to the person receiving such permission, revoke the same, the date of the revocation being noted by the clerk upon the record kept by him.

All permissions to carry or bear concealed weapons heretofore granted are hereby revoked.

History: En. Sec. 5, Ch. 74, L. 1919; 3529, R. C. M. 1947; redes. 94-8-214 by re-en. Sec. 11306, R. C. M. 1921; Sec. 94- 529, Ch. 513, L. 1973.

94-8-215. (11307) Definition of concealed weapons. Concealed weapons shall mean any weapon mentioned in the foregoing sections, which shall be wholly or partially covered by the clothing or wearing apparel of the person so carrying or bearing the weapon.

History: En. Sec. 6, Ch. 74, L. 1919; 3530, R. C. M. 1947; redes. 94-8-215 by Sec. re-en. Sec. 11307, R. C. M. 1921; Sec. 94- 29, Ch. 513, L. 1973.

94-8-216. (11308) Definition of unincorporated town. A town, if unincorporated, within the meaning of this act, shall consist of at least ten

dwellings situated so that no one of said buildings is distant from another more than one hundred yards.

History: En. Sec. 7, Ch. 74, L. 1919; 3531, R. C. M. 1947; redes. 94-8-216 by re-en. Sec. 11308, R. C. M. 1921; Sec. 94- Sec. 29, Ch. 513, L. 1973.

94-8-217. (11309) Jurisdiction of courts. The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this act.

History: En. Sec. 8, Ch. 74, L. 1919; 3532, R. C. M. 1947; redes. 94-8-217 by re-en. Sec. 11309, R. C. M. 1921; Sec. 94- Sec. 29, Ch. 513, L. 1973.

94-8-218. (11530) Firing firearms. Every person who willfully shoots or fires off, a gun, pistol, or any firearm, within the limits of any town or city, or of any private inclosure which contains a dwelling house, is punishable by a fine not exceeding twenty-five dollars.

History: En. Secs. 1, 2, p. 46, Ex. L. 1873; re-en. Sec. 185, 4th Div. Rev. Stat. 1879; re-en. Sec. 228, 4th Div. Comp. Stat. 1887; amd. Sec. 1161, Pen. C. 1895; re-en. Sec. 8834, Rev. C. 1907; re-en. Sec. 11530, R. C. M. 1921; Sec. 94-3578, R. C. M. 1947; redes. 94-8-218 by Sec. 29, Ch. 513, L. 1973.

Cities and Towns

An illustration is found in this section of legislative use of "city or town" under circumstances which would render it absurd to hold that only incorporated cities and towns are meant. State ex rel. Powers v. Dale, 47 M 227, 131 P 670.

94-8-219. When Montana residents may purchase rifles or shotguns in contiguous states. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, and regulations thereunder, as administered by the United States secretary of the treasury, and provided further, that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

History: En. Sec. 1, Ch. 87, L. 1969; Sec. 94-3578.1, R. C. M. 1947; redes. 94-8-219 by Sec. 29, Ch. 513, L. 1973.

Compiler's Note

The federal Gun Control Act of 1968, referred to in this section, is the act of October 22, 1968, P. L. 90-618, compiled at 18 U.S.C. 921-928.

94-8-220. When residents of contiguous state may purchase rifles or shotguns in Montana. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

History: En. Sec. 2, Ch. 87, L. 1969; Sec. 94-3578.2, R. C. M. 1947; redes. 94-8-220 by Sec. 29, Ch. 513, L. 1973.

94-8-221. (11565) Firearms—use of by children under the age of fourteen years prohibited. It shall be unlawful for any parent, guardian, or other person, having the charge or custody of any minor child under the

age of fourteen years, to permit such minor child to carry or use any firearms of any description, loaded with powder and lead, in public, except when such child is in the company of such parent or guardian or under the supervision of a qualified firearms safety instructor, who has been duly authorized by such parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; amd. Sec. 1, Ch. 139, L. 1963; redes. 94-8-Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, 221 by Sec. 29, Ch. 513, L. 1973.
R. C. M. 1921; Sec. 94-3579, R. C. M. 1947;

94-8-222. (11566) Liability of parent or guardian. Any parent, guardian, or other person, violating the provisions of this act shall be guilty of a misdemeanor, and the county attorney, on complaint of any person, must prosecute violations of this act.

History: En. Sec. 2, Ch. 111, L. 1907; R. C. M. 1921; Sec. 94-3580, R. C. M. 1947; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973.

94-8-223. (11281) Sale or manufacture of Maxim silencers and various explosives for wrongful use a felony. Any person who shall make, manufacture, compound, buy, sell, give away, offer for sale or to give away, transport, or have in possession any Maxim silencer, bomb, nitroglycerin, giant, oriental, or thunderbolt powder, dynamite, ballistite, fulgarite, detonite, or any other explosive compound, or any inflammable material, or any instrument or agency, with intent that the same shall be used in this state or anywhere else for the injury or destruction of public or private property, or the assassination, murder, injury, or destruction of any person or persons, either within this state or elsewhere, or knowing that such explosive compounds or such materials, instruments, or agencies are intended to be used by any other person or persons for any such purpose, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for not less than five years nor more than thirty years, or by a fine of not less than one thousand dollars nor more than twenty thousand dollars, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 6, Ex. L. 1918; 35-184, R. C. M. 1947; redes. 94-8-223 by re-en. Sec. 11281, R. C. M. 1921; Sec. 94- Sec. 29, Ch. 513, L. 1973.

94-8-224. (11282) Sale and manufacture of Maxim silencers and various explosives for wrongful use a felony—who are principals. All persons aiding, abetting, or in any manner assisting in the manufacture, compounding, buying, selling, offering for sale, or transporting any explosive compounds, or any inflammable material, or any instrument or agency, either by furnishing material or ingredients, or soliciting or contributing money or other property with which to purchase said materials or ingredients, or by assisting by skill or labor, or by acting as agents for the principal, or in any manner aiding as accessories before the fact, knowing that any of such explosive compounds, or such materials, instruments, or agencies are intended to be used by the principals or any other person or persons for any of the purposes mentioned in the preceding section, shall be deemed principals and may be convicted and punished in the same manner and to the same extent as such principal or principals.

History: En. Sec. 2, Ch. 6, Ex. L. 1918; 35-185, R. C. M. 1947; redes. 94-8-224 by re-en. Sec. 11282, R. C. M. 1921; Sec. 94- Sec. 29, Ch. 513, L. 1973.

94-8-225. (11283) Sale and manufacture of Maxim silencers and various explosives for wrongful use a felony—possession presumptive evidence of what. The possession of any Maxim silencer or bomb of any kind, or chemical compounds intended only for the destruction of life or property, shall be presumptive evidence that the same are intended to be used in the destruction of or injury to property or life, within the meaning of this act.

History: En. Sec. 3, Ch. 6, Ex. L. 1918; 35-186, R. C. M. 1947; redes. 94-8-225 by re-en. Sec. 11283, R. C. M. 1921; Sec. 94- 35-186, R. C. M. 1947; redes. 94-8-225 by re-en. Sec. 11283, R. C. M. 1921; Sec. 94- Sec. 29, Ch. 513, L. 1973.

94-8-226. Switchblade knives—possession, selling, using, giving, or offering for sale—penalty—collectors. Every person who carries or bears upon his person or who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him or who owns, possesses, uses, stores, gives away, sells or offers for sale, a switchblade knife shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding six (6) months or by both such fine and imprisonment; provided, that a bona fide collector, whose collection is registered with the sheriff of the county in which said collection is located, is hereby exempted from the provisions of this act. For the purpose of this section a switchblade knife is defined as any knife which has a blade one and one-half (1½) inches long or longer, which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R. C. M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973.

Part Three

Lotteries

94-8-301. (11149) Lottery defined. A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.

History: En. Sec. 580, Pen. C. 1895; re-en. Sec. 8406, Rev. C. 1907; re-en. Sec. 11149, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1935; Sec. 94-3001, R. C. M. 1947; redes. 94-8-301 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 319.

Bank Night

In an action by the state to enjoin the operation of "bank night" drawings as a lottery under this section, submitted on an agreed statement of facts wherein it was stipulated among other matters that "the money that is used for the purpose of purchasing the defense bond is received from the rental of the store and office

properties of the defendant corporation in the theater buildings, and not from the sale of admission tickets to the theater," held, on the facts presented, that the scheme did not constitute a lottery, and second part of section 2, article XIX of the 1889 constitution was not self-executing. State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 57, 70, 132 P 2d 689, overruling State ex rel. Dussault v. Fox Missoula Theatre Corp., 110 M 441, 101 P 2d 1065.

Bingo and Keno

The game of "keno" was held to be a lottery and prohibited by this law. Gam-

bling is a generic term, embracing within its meaning all forms of play or game for stakes wherein one or the other participating stands to win or lose as a matter of chance. Play at lottery is gambling. *State ex rel. Leahy v. O'Rourke*, 115 M 502, 146 P 2d 168.

Cash Prize or Merchandise

To constitute a lottery, it is immaterial whether the prize be given in cash or in merchandise so long as it was awarded by chance and a consideration paid for that chance. *State v. Hahn*, 105 M 270, 72 P 2d 459, overruled on other grounds in *State v. Bosch*, 125 M 566, 242 P 2d 477.

Numbers Games

A numbers game, whether called Chinese lottery, "The Crown Game," "The Crown punchboard game" or any other name is a lottery. *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029.

Punch Boards

Punch boards constitute a lottery. *State ex rel. Harrison v. Deniff*, 126 M 109, 245 P 2d 140.

In an action for violation of this section it was no defense that the defendant had offered to pay for the operation of such punch boards in accordance with chapter 201, Laws 1951, which purported to license trade stimulators such as punch boards, since it was not competent for the legislature to authorize lotteries in view of section 2, article 19 of the 1889 constitution and the case of *State ex rel. Harrison v. Deniff*. *State v. Tursich*, 127 M 504, 267 P 2d 641, 642.

Requisites of Lottery

The legal requisites necessary to charge the offense of operating a lottery under this section are the offering of a prize, the awarding of the prize by chance, and the giving of a consideration for an opportunity to win the prize. *State v. Hahn*, 105 M 270, 72 P 2d 459, overruled on other grounds in *State v. Bosch*, 125 M 566, 242 P 2d 477.

Skill Ball

Where county attorney first set out his charge in the language of this section and then proceeded to set out in detail the game, while it was conceivable that in pursuing this method a prosecutor could plead

himself out of court by detailing facts which when challenged by demurrer would show themselves to be without the ban of the statute, it was not true of this information because the essential elements were supplied by the particulars. *State v. Hahn*, 105 M 270, 72 P 2d 459, overruled on other grounds in *State v. Bosch*, 125 M 566, 242 P 2d 477.

Skill or Chance

To defeat a charge of conducting a lottery (styled "skill ball") it is not enough that some skill is involved in the game; the test to be applied in determining whether a game is one of skill or chance being, is not whether it contains an element of skill or an element of chance, but which of the two is the dominating element that determines the result of the game. *State v. Hahn*, 105 M 270, 72 P 2d 459, overruled on other grounds in *State v. Bosch*, 125 M 566, 242 P 2d 477.

Slot Machines

The operation of a slot machine is a lottery and banned by the criminal laws of this state. *State v. Marek*, 124 M 178, 220 P 2d 1017; *State v. Read*, 124 M 184, 220 P 2d 1020; *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029.

Valuable Consideration

The words "pay" a "valuable consideration" used in this section are not synonymous with furnishing a good consideration required as the basis for an enforceable contract according to the context, and their approved usage. "Consideration" is defined by section 13-501 as that which is paid to the promisor "as an inducement." What can be obtained free cannot be said to have been induced by a consideration; hence one purchasing an admission ticket in order to obtain a chance to win which he can have free of charge, does not pay consideration for the gratuity. *State ex rel. Stafford v. Fox-Great Falls Theatre Corp.*, 114 M 52, 132 P 2d 689.

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. *State v. Cox*, 136 M 507, 349 P 2d 104.

94-8-302. (11149.1) Drawings for prizes or premiums not contemplated by act, when. This act [part] shall not apply to the giving away of cash or merchandise attendance prizes or premiums by public drawings at agricultural fairs or rodeo associations in this state, and the county fair commis-

sioners of agricultural fairs or rodeo associations in this state may give away at such fairs cash or merchandise attendance prizes or premiums by public drawings.

History: En. Sec. 2, Ch. 36, L. 1935; Sec. 94-3002, R. C. M. 1947; redes. 94-8-302 by Sec. 29, Ch. 513, L. 1973.

94-8-303. (11150) Punishment for drawing lottery. Every person who contrives, prepares, sets up, proposes, or draws any lottery is guilty of a misdemeanor.

History: En. Sec. 581, Pen. C. 1895; re-en. Sec. 8407, Rev. C. 1907; re-en. Sec. 11150, R. C. M. 1921; Sec. 94-3003, R. C. M. 1947; redes. 94-8-303 by Sec. 29, Ch. 513, L. 1973.

lottery and banned by the criminal laws of this state. State v. Marck, 124 M 178, 220 P 2d 1017; State v. Read, 124 M 184, 220 P 2d 1020; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029.

Slot Machines

The operation of a slot machine is a

94-8-304. (11151) Punishment for selling lottery tickets. Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share or interest or any paper, certificate or instrument purporting or understood to be or to represent any ticket, chance, share or interest in, or depending upon the event of any lottery is guilty of a misdemeanor.

History: En. Sec. 582, Pen. C. 1895; re-en. Sec. 8408, Rev. C. 1907; re-en. Sec. 11151, R. C. M. 1921; Sec. 94-3004, R. C. M. 1947; redes. 94-8-304 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 321.

8-301) the sole question under the pleadings was whether a lottery was being conducted, not whether defendant was violating this section; hence where the evidence failed to prove the existence of a lottery, the claim advanced thereafter on appeal that there was also a violation of this section, became immaterial. State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 132 P 2d 689.

Nonexistent Lottery

In a proceeding to enjoin a theater corporation from operating "bank night" drawings as a nuisance under the lottery statute, section 94-3001 (renumbered 94-

94-8-305. (11152) Aiding lotteries. Every person who aids or assists, either by printing, writing, advertising, publishing or otherwise, in setting up, managing or drawing any lottery or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor.

History: En. Sec. 583, Pen. C. 1895; re-en. Sec. 8409, Rev. C. 1907; re-en. Sec. 11152, R. C. M. 1921; Sec. 94-3005, R. C.

M. 1947; redes. 94-8-305 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 322.

94-8-306. (11153) Lottery offices—advertising lottery offices. Every person who opens, sets up or keeps, by himself, or by any other person, any office or any other place for the sale of, or for registering the number of any ticket in any lottery within or without this state, or who by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of, any such office is guilty of a misdemeanor.

History: En. Sec. 584, Pen. C. 1895; re-en. Sec. 8410, Rev. C. 1907; re-en. Sec. 11153, R. C. M. 1921; Sec. 94-3006, R. C.

M. 1947; redes. 94-8-306 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 323.

94-8-307. (11154) Insuring lottery tickets—publishing offers to insure.

Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to repay any sum or deliver the same, or any other property if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn at any particular time, or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency, dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

History: En. Sec. 585, Pen. C. 1895; M. 1947; redes. 94-8-307 by Sec. 29, Ch. re-en. Sec. 8411, Rev. C. 1907; re-en. Sec. 513, L. 1973. Cal. Pen. C. Sec. 324.
11154, R. C. M. 1921; Sec. 94-3007, R. C.

94-8-308. (11155) Property offered for disposal in lottery forfeited.

All moneys or property offered for sale or distribution in violation of any of the provisions of this chapter [part], are forfeited to the state, and may be recovered by information filed, or by an action brought by the attorney general, or by any county attorney in the name of the state. Upon the filing of the information or complaint, the clerk of the court, or, if the suit is in a justice's court, the justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner as attachments are issued from the district courts in civil cases.

History: En. Sec. 586, Pen. C. 1895; M. 1947; redes. 94-8-308 by Sec. 29, Ch. re-en. Sec. 8412, Rev. C. 1907; re-en. Sec. 513, L. 1973. Cal. Pen. C. Sec. 325.
11155, R. C. M. 1921; Sec. 94-3008, R. C.

94-8-309. (11156) Letting building for lottery purposes. Every person who lets or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing, any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

History: En. Sec. 587, Pen. C. 1895; M. 1947; redes. 94-8-309 by Sec. 29, Ch. re-en. Sec. 8413, Rev. C. 1907; re-en. Sec. 513, L. 1973. Cal. Pen. C. Sec. 326.
11156, R. C. M. 1921; Sec. 94-3009, R. C.

94-8-310. (11157) Lotteries out of this state. The provisions of this chapter [part] are applicable to lotteries drawn or to be drawn out of this state, whether authorized or not by the laws of the state or country where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.

History: En. Sec. 588, Pen. C. 1895; M. 1947; redes. 94-8-310 by Sec. 29, Ch. re-en. Sec. 8414, Rev. C. 1907; re-en. Sec. 513, L. 1973.
11157, R. C. M. 1921; Sec. 94-3010, R. C.

94-8-311. (11158) Punishment. Every person convicted of any of the offenses mentioned in this chapter [part], is punishable by imprisonment in

the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both.

History: En. Sec. 589, Pen. C. 1895; re-en. Sec. 8415, Rev. C. 1907; re-en. Sec. 11158, R. C. M. 1921; Sec. 94-3011, R. C. M. 1947; redes. 94-8-311 by Sec. 29, Ch. 513, L. 1973.

lottery and banned by the criminal laws of this state. State v. Marck, 124 M 178, 220 P 2d 1017; State v. Read, 124 M 184, 220 P 2d 1020; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029.

Slot Machines

The operation of a slot machine is a

Part Four

Gambling

94-8-401. (11159) Gambling games prohibited—penalty—license fees for card tables. Every person who deals, or carries on, opens or causes to be opened, or who conducts, or causes to be conducted, operates or runs, either as principal, agent, owner or employee, whether for hire, or not, any game of monte, dondo, fan-tan, tan, studhorse poker, craps, seven and a half, twenty-one, faro, roulette, pangeni or pangene, hokey-pokey, draw-poker, or the game commonly known as round-the-table poker, or any banking or percentage game, or any game commonly known as sure-thing game, or any game of chance played with cards, dice or any device whatsoever, or who runs or conducts or causes to be run or conducted, or keeps any slot machine, punchboard, or other similar machine or device, or permits the same to be run or conducted for money, checks, credits, or any representative of value, or any property or thing whatsoever, or any person owning or in charge of any cigar store, drugstore, or other place of business, or any place where drinks are sold or served, who permits any of the games prohibited in this section to be played, in or about such cigar store, drugstore, or other place of business, or permits any slot machine, punchboard, or similar device to be kept therein, or any person or persons who conduct any bucketshop where stocks or securities of any kind are sold on margins, and every person who plays or bets at or against said prohibited games or devices, except as hereinafter provided, is guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000.00), and may be imprisoned for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment; [provided, however, that it shall be lawful for cigar stores, fraternal organizations, charitable organizations, drugstores and other places of business, upon the payment of a license fee therefor to the county treasurer in the sum of ten dollars (\$10.00) annually per table used or operated in such place of business, to maintain and keep for the use and pleasure of their customers and patrons, card tables and cards with which and at which such games as rummy, whist, bridge whist, blackjack, euchre, pinochle, pangene or pangeni, seven-up, hearts, freeze-out, casino, solo, cribbage, five hundred, penie ante, dominos, high-five and checkers may be played for pastime and amusement by customers who are not minors, and for the maintenance of which a charge may be made, to be paid by the users by the purchase of trade checks which must be redeemable in merchandise at the going retail price of such merchandise, which is the stock in trade of

such business; and that places of business may, upon the payment of a license fee therefor to the county treasurer in the sum of ten dollars (\$10.00) annually, exhibit for use and sale to all customers not minors, trade stimulators, such as pull boards and ticket boards, where each board so used returns to the owner or business not to exceed the going retail price of the goods disposed of and sold and disposed of through the use of the same, and which goods sold and disposed of through the use of the same must not be other than the goods constituting the usual stock in trade of the business using the same.]

History: En. Sec. 600, Pen. C. 1895; amd. Sec. 1, p. 80, L. 1897; amd. Secs. 1, 2 and 3, pp. 166, 167, L. 1901; amd. Sec. 1, Ch. 115, L. 1907; re-en. Sec. 8416, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1917; re-en. Sec. 11159, R. C. M. 1921; amd. Sec. 1, Ch. 153, L. 1937; Sec. 94-2401, R. C. M. 1947; re-des. 94-8-401 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 330.

Compiler's Note

The provisos to this section (shown in brackets) were held unconstitutional in *State ex rel. Harrison v. Deniff* and in *State ex rel. Woodahl v. District Court*. See annotations on "Constitutionality" below.

Constitutionality

This act and sections 84-5701 and 84-5702 (since repealed) authorizing and licensing so-called trade stimulators violated section 2, article XIX of the 1889 constitution, which prohibited the legislature from authorizing lotteries. *State ex rel. Harrison v. Deniff*, 126 M 109, 245 P 2d 140.

Voters' approval of gambling option submitted with 1972 Constitution did not repeal previous laws against gambling or validate the 1937 amendment of this section previously held unconstitutional. *State ex rel. Woodahl v. District Court*, 511 P 2d 318.

Amount of Stakes Immaterial

This section makes no distinction as to the amount of the stakes involved; hence it is immaterial that the stakes were merely treats or cigars. *State v. Dumphy*, 57 M 229, 187 P 897.

Disposal of Money Found in Slot Machines

Although provisions for the seizure and destruction of apparatus used for gaming do not authorize seizure of money contained in slot machines and not found by the officer seizing them until they were about to be destroyed by order of court, it does not follow, in an action for its conversion by the operator of the machines, that the taking was unlawful or that plaintiff was entitled to its return. *Dorrell v. Clark*, 90 M 585, 4 P 2d 712.

Federal Travel Act

Sale by out-of-state manufacturers of punch boards and pull tabs to distributors in Montana did not constitute facilitation of unlawful activity in violation of former Montana gambling laws within the meaning of the Federal Travel Act (18 U.S.C. § 1952). *United States v. Gibson Specialty Co.*, 507 F 2d 446.

Game of Skill as Gambling Device

An innocent game involving the element of skill alone becomes a gambling device when players bet on the outcome. *State ex rel. Dussault v. Kilburn*, 111 M 400, 109 P 2d 1113.

Pinball Machine

A "pinball" machine, equipped with a sloping plane studded with pins and containing holes into which a small ball, catapulted by means of a spring, must fall to enable the player to win and which pays off in trade checks, is a gambling device under the provisions of this section, and while the evidence shows that by long practice a certain amount of skill may be developed, with the patronizing public it is purely a game of chance, and the building in which it is used was a nuisance under former section 94-1002. *State ex rel. Dussault v. Kilburn*, 111 M 400, 109 P 2d 1113.

Prosecution of Gambling Laws

Actions for violation of the gambling laws may be prosecuted under either this section and section 94-8-404 or under former section 94-1001 et seq., the abatement law, or under each and all of such sections. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988, 1000.

Slot Machines

A so-called mint vending machine which by the insertion of a nickel and pulling a lever will bring the operator a package of mint of the value of five cents, and which may or may not in addition bring to him trade checks good for five cents in trade (and which also may be operated by the insertion of a trade check, in which event trade checks but not mint may or may not be paid), is a gambling device;

the machine appeals to the operator's propensities to gamble and lures him into continuing his play in the hope that he may gain an amount much greater than the amount risked. *Marvin v. Sloan*, 77 M 174, 250 P 443.

Information charging defendant with the operation of slot machines was not subject to demurrer as not charging an offense. *State v. Israel*, 124 M 152, 220 P 2d 1003.

There is nothing in this law that makes it lawful for any person or any religious, fraternal or charitable organization, or any private home to run, conduct or keep any slot machine within the state of Montana. *State v. Israel*, 124 M 152, 220 P 2d 1003.

The operation of all slot machines is prohibited to all persons without exception. *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029.

Sufficiency of Charge

An information charging a violation of

the antigambling law in the words of this section was sufficient, and it was not necessary to describe the game in detail, or set out the means by which it was carried on. *State v. Ross*, 38 M 319, 99 P 1056.

An information charging defendant with permitting a game of chance to be played upon his premises is not defective because of its failure to set forth the names of the persons permitted to play. *State v. Radmilovich*, 40 M 93, 105 P 91.

The particular name of a game of chance played with cards for money, checks, etc. need not be stated in the information. *State v. Duncan*, 40 M 531, 107 P 510.

The allegation that the defendant did carry on, conduct, and cause to be conducted the game described is sufficient to charge an offense without regard to the expression "as owner and proprietor thereof," which may be regarded as surplusage. *State v. Tudor*, 47 M 185, 131 P 632.

DECISIONS UNDER FORMER LAW

Construction

This section, designed to permit the playing of certain games for amusement and pastime and as business trade stimulators upon payment of a license, was not susceptible of a construction allowing use of trade checks for betting purposes in the games enumerated. *State v. Aldahl*, 106 M 390, 78 P 2d 935.

Construction of Amendment

The 1937 amendment to this section which added the licensing provisions did not affect section 94-8-404. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988.

Redeemable Tokens

The operator of a cigar store and beer parlor who permitted the game of blackjack to be played therein with trade checks ranging in price from five cents to five dollars, sold by him to the players and which were redeemable, at the option of the holder, either in merchandise or cash, was properly found guilty of violating this section. *State v. Aldahl*, 106 M 390, 78 P 2d 935.

Religious, Fraternal and Charitable Organizations

Religious, fraternal and charitable or-

ganizations and private homes are by section 94-8-403 exempt from the payment of license fees but are not exempt from the provisions of this act which existed prior to the 1937 amendment. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988; *State v. Israel*, 124 M 152, 220 P 2d 1003.

Slot Machines

Slot machines are not included among the enumerated "hickey" games nor among the "trade stimulators" from which the ban was lifted by the 1937 amendment known as the "Hickey Law." *State v. Israel*, 124 M 152, 220 P 2d 1003; *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029.

This section, banning the possession of slot machines, was not repealed by sections 84-3601 to 84-3610 (since repealed). *State v. Engle*, 124 M 175, 220 P 2d 1015; *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029.

The ban against slot machines was not lifted by sections 84-5701 and 84-5702 (since repealed). *State ex rel. Olsen v. Crown Cigar Store*, 124 M 310, 220 P 2d 1029.

94-8-402. Licenses—application—expiration. The license fee provided for in the preceding section shall be paid to the treasurer of the county in which such licensee operates before any of the acts or things herein licensed and permitted shall be done, operated, or used, and the applicant for a license shall, along with the amount of the license fee, send or give to the

county treasurer the name and location of the business for which the license is sought, together with the names of all the owners thereof, whereupon the county treasurer shall issue a license to said place of business, which license shall show on the face thereof, the number of card tables for which license is paid, and the trade stimulaters, if any, for the use of which license is paid. All licenses issued hereunder shall expire each and every year at midnight, the 31st day of December, of the calendar year for which they are issued. The funds so received shall be deposited in the poor fund of the county.

History: En. Sec. 2, Ch. 153, L. 1937; Sec. 94-2402, R. C. M. 1947; redes. 94-8-402 by Sec. 29, Ch. 513, L. 1973.

Compiler's Note

See Compiler's Note to section 94-8-401 and the annotation on "Constitutionality" under that section.

94-8-403. Organizations excluded from act. Any religious, fraternal or charitable organization, and all private homes are not included within the provisions of this act.

History: En. Sec. 3, Ch. 153, L. 1937; Sec. 94-2403, R. C. M. 1947; redes. 94-8-403 by Sec. 29, Ch. 513, L. 1973.

Evidence of Exempt Status

Evidence in an action to abate a gambling nuisance under former section 94-1002, conducted by a club claiming immunity from prosecution for allowing gambling on the premises occupied by it, was insufficient to show that it was connected with a fraternal organization or a dramatic branch thereof, but showed on the other hand that there was no regularity of membership and that anyone whom the doorkeeper, one of the defendants, felt like admitting could enter and participate in the game of "keno" being played on the premises. State ex rel. Leahy v. O'Rourke, 115 M 502, 146 P 2d 168.

In an action to abate a gambling nuisance conducted in the club rooms of a fraternal organization wherein exemption was claimed from the operation of the gambling laws under this section, evidence was sufficient to justify the finding that the entire scheme of operations was a mere subterfuge, and that the gambling was not limited to nor for the amusement of bona fide members, but was operated as a business; the question in abatement being whether a duly organized fraternal

organization is permitting practices in its club rooms in violation of the gambling laws as distinguished from a quo warranto attack upon corporate status. State ex rel. Bottomly v. Johnson, 116 M 483, 485, 154 P 2d 262.

The enumerated exclusions do not exclude an individual who shares in the profits and who operates as he pleases, not in conformity with the bylaws of the organization and without regard to the rights of the governing body of such excluded body. State v. Hovland, 118 M 454, 169 P 2d 341.

Scope of Exemption

The words "this act" in this section mean the licensing provisions of section 94-8-401 which were added by the 1937 act but not the remainder of the section which was in existence prior to such amendment. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988.

Slot Machines

There is nothing in this law that makes it lawful for any person or any religious, fraternal or charitable organization, or any private home to run, conduct or keep any slot machine within the state of Montana. State v. Israel, 124 M 152, 220 P 2d 1003.

94-8-404. (11160) Possession of gambling implements prohibited. Any person who has in his possession, or under his control, or who permits to be placed, maintained or kept in any room, space, inclosure or building, owned, leased or occupied by him, or under his management or control, any faro box, faro layout, roulette wheel, roulette table, crap table, slot machine, or any machine or apparatus of the kind mentioned in the preceding section of this act, is punishable by a fine of not less than one hundred nor more

than one thousand dollars, and may be imprisoned for not less than three months nor more than one year in the discretion of the court; provided, however, that this section shall not apply to a public officer, or to a person coming into possession thereof in or by reason of the performance of an official duty and holding the same to be disposed of according to law.

History: En. Sec. 2, Ch. 115, L. 1907; Sec. 8417, Rev. C. 1907; re-en. Sec. 11160, R. C. M. 1921; Sec. 94-2404, R. C. M. 1947; redes. 94-8-404 by Sec. 29, Ch. 513, L. 1973.

ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029.

Compiler's Note

The "preceding section" referred to in this section is section 94-8-401.

Effect of Other Laws

This section was not affected by the 1937 amendment to section 94-8-401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029.

This section, banning the possession of slot machines, was not repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015; State

Possession of Equipment

This section prohibits mere possession of gambling equipment and does not require intent to use it unlawfully; defendant who openly rebuilt and manufactured gambling devices for shipment to Nevada, where they were legal, was in violation of this section. State v. Wilson, 160 M 473, 503 P 2d 522.

Prosecution of Gambling Laws

Actions for violation of the gambling laws may be prosecuted under either this section and section 94-8-401 or as a nuisance under the abatement law. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988.

94-8-405. (11161) Obtaining money by means of gambling games or tricks deemed to be larceny. Every person who, by means of any game, device, sleight-of-hand trick, or other means whatever, by the use of cards or other implements other than those mentioned in the following section hereof, or while betting on sides, or hands, of any such game or play, fraudulently obtains from another person money or property of any description, shall be deemed guilty of larceny of property of like value.

History: En. Sec. 3, Ch. 115, L. 1907; Sec. 8418, Rev. C. 1907; re-en. Sec. 11161, R. C. M. 1921; Sec. 94-2405, R. C. M. 1947;

redes. 94-8-405 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 332.

94-8-406. (11162) Brace and bunco games prohibited. Every person who uses or deals with or wins any money or property by the use of brace faro, or of any two-card faro box, or any brace roulette wheel or roulette table, or any brace apparatus, or with loaded dice or with marked cards, or by any game commonly known as a confidence game or bunco, is punishable by imprisonment in the state prison not exceeding five years.

History: En. Sec. 4, Ch. 115, L. 1907; Sec. 8419, Rev. C. 1907; re-en. Sec. 11162, R. C. M. 1921; Sec. 94-2406, R. C. M. 1947; redes. 94-8-406 by Sec. 29, Ch. 513, L. 1973.

Confidence or Bunco Game

Any game which is by this statute outlawed may be a confidence or bunco game, for the design and conduct of those who use it gives it its character under this statute. State v. Hale, 134 M 131, 328 P 2d 930.

Gambling Devices

The games described in this section are

purported gambling devices so contrived, although masked as legitimate operations, as to bilk the victim of his wager by manipulation. These games do not depend upon the active or passive emotions of the victim. State v. Hale, 134 M 131, 328 P 2d 930.

Morocco

Defendant who used and dealt with game of "Morocco," a confidence game and bunco game, to win money from his victim was properly convicted of the crime prohibited by this section. State v. Hale, 134 M 131, 328 P 2d 930.

Penalty

The penalty of violating this statute is imposed upon every person who uses or deals with any game commonly known as a confidence game or bunco, as well as one who wins. *State v. Hale*, 134 M 131, 328 P 2d 930.

Purpose of Statute

This statute is aimed at the person who

uses or deals with a confidence game, or bunco game, and not so much against the inanimate paraphernalia so used. *State v. Hale*, 134 M 131, 328 P 2d 930.

Separate and Distinct Crime

This statute covers a separate and distinct crime from that covered by former section 94-1806. *State v. Hale*, 134 M 131, 328 P 2d 930.

94-8-407. (11163) Soliciting or persuading persons to visit gambling resorts prohibited. Any person who persuades or solicits another to visit any room, tent, apartment or place used, or represented by the person soliciting or persuading to be a place used for the purpose of running any of the games prohibited by this act, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment not less than three months nor more than one year, or by both such fine and imprisonment in the county jail.

History: En. Sec. 5, Ch. 115, L. 1907; Sec. 8420, Rev. C. 1907; re-en. Sec. 11163, R. C. M. 1921; Sec. 94-2407, R. C. M. 1947; redes. 94-8-407 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 318.

94-8-408. (11164) Penalty for second offense. Every person who, having been convicted of a violation of any of the provisions of this act, which is punishable by fine, commits another such violation after such conviction, is punishable by a fine of not less than five hundred nor more than one thousand dollars, and by imprisonment in the county jail for not less than six months nor more than one year.

History: En. Sec. 6, Ch. 115, L. 1907; Sec. 8421, Rev. C. 1907; re-en. Sec. 11164, R. C. M. 1921; Sec. 94-2408, R. C. M. 1947; redes. 94-8-408 by Sec. 29, Ch. 513, L. 1973.

94-8-409. (11165) Maintaining gambling apparatus a nuisance. Any article, machine or apparatus maintained or kept in violation of any of the provisions of this act is a public nuisance, but the punishment for the maintaining or keeping of the same shall be as provided in this act.

History: En. Sec. 7, Ch. 115, L. 1907; re-en. Sec. 8422, Rev. C. 1907; re-en. Sec. 11165, R. C. M. 1921; Sec. 94-2409, R. C. M. 1947; redes. 94-8-409 by Sec. 29, Ch. 513, L. 1973. v. Crown Cigar Store, 124 M 310, 220 P 2d 1029.

Nuisances

Any article, machine or apparatus maintained or kept in violation of any of the provisions of sections 94-8-401 or 94-8-404 is a public nuisance. *State ex rel. Olsen*

Slot Machines

The using, operating, keeping, and maintaining for use, of slot machines constitutes a nuisance. *State ex rel. Replogle v. Joyland Club*, 124 M 122, 220 P 2d 988; *State v. Israel*, 124 M 152, 220 P 2d 1003; *State ex rel. Brown v. Buffalo Rapids Club*, 124 M 172, 220 P 2d 1014.

94-8-410. (11166) Duty of public officer to seize gambling implements and apparatus. It shall be the duty of every officer authorized to make arrests, to seize every machine, apparatus, or instrument answering to the description contained in this act, or which may be used for the carrying on or conducting of any game or games mentioned in this act, and to arrest the person actually or apparently in possession or control thereof, or of the premises in which the same may be found, if any such person be present at

the time of the seizure and to bring the machine, apparatus, or instrument and the prisoner, if there be one, before a committing magistrate.

History: En. Sec. 8, Ch. 115, L. 1907; Sec. 8423, Rev. C. 1907; re-en. Sec. 11166, R. C. M. 1921; Sec. 94-2410, R. C. M. 1947; redes. 94-8-410 by Sec. 29, Ch. 513, L. 1973.

Destruction of Machines

Decree requiring sheriff to sell seized slot machines was amended on appeal to require the sheriff to destroy them. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988.

94-8-411. (11167) Duty of magistrate to retain gambling implement or apparatus for trial. The magistrate before whom any machine, apparatus, or instrument is brought pursuant to the preceding section must, if there be a prisoner and if he shall hold such prisoner, cause the machine, apparatus, or instrument to be delivered to the county attorney to be used as evidence on the trial of such prisoner. If there be no prisoner, or if the magistrate does not hold the prisoner, he must cause the immediate and public destruction of the machine, apparatus, or instrument in the presence of said magistrate. No person owning or claiming to own any such machine, apparatus, or instrument so destroyed, shall have any right of action against any person or against the state, county, or city for the value of such article, or for damages. It shall be the duty of the county attorney to produce such articles in court on the trial of the case. It shall be the duty of the trial court, after the disposition of the case, and whether the defendant be convicted, acquitted, or fails to appear for trial, to cause the immediate and public destruction of any such article by the sheriff or any other officer or person designated by the court.

History: En. Sec. 9, Ch. 115, L. 1907; Sec. 8424, Rev. C. 1907; re-en. Sec. 11167, R. C. M. 1921; Sec. 94-2411, R. C. M. 1947; redes. 94-8-411 by Sec. 29, Ch. 513, L. 1973.

slot machines and other gambling equipment returned to defendant on an ex parte proceeding before the disposition of the case and the order was void ab initio. State v. Israel, 124 M 152, 220 P 2d 1003.

Return of Machines Erroneous

It was error for district court to order

94-8-412. (11167.1) Disposal of moneys confiscated by reason of violation of gambling laws. All moneys seized or taken by any peace officer and confiscated by order of any court, by reason of a violation of the gambling laws of the state of Montana, shall be deposited with the county treasurer of the county in which such seizure and confiscation was made, and shall be credited to the poor fund of the county.

History: En. Sec. 1, Ch. 25, L. 1933; Sec. 94-2412, R. C. M. 1947; redes. 94-8-412 by Sec. 29, Ch. 513, L. 1973.

94-8-413. (11168) Authority to break and enter buildings where games are probably being played. Every sheriff, constable and public officer having probable cause to believe that any room, tent, or apartment is being used as a room, tent, or apartment for the playing or conducting of any of the games mentioned in this act, shall have authority to break open any door, or opening into any such room, tent, or apartment, with or without a warrant of arrest, for the purpose of arresting the offenders against this act.

History: En. Sec. 10, Ch. 115, L. 1907; R. C. M. 1921; Sec. 94-2413, R. C. M. 1947; Sec. 8425, Rev. C. 1907; re-en. Sec. 11168, redes. 94-8-413 by Sec. 29, Ch. 513, L. 1973.

94-8-414. (11169) Duty of public officer to make complaint. Every county attorney, sheriff, constable, chief of police, marshal, or police officer must inform against and make complaint and diligently prosecute persons whom they know, or concerning whom they may be informed, or whom they may have reasonable cause to believe to be offenders against the provisions of this act. The neglect or refusal of any such officer to make complaint against or diligently prosecute persons he has reasonable cause to believe to be offenders against the provisions of this act shall be deemed sufficient cause for removal from office.

History: En. Sec. 11, Ch. 115, L. 1907; Sec. 8426, Rev. C. 1907; re-en. Sec. 11169, R. C. M. 1921; Sec. 94-2414, R. C. M. 1947; redes. 94-8-414 by Sec. 29, Ch. 513, L. 1973.

94-8-415. (11170) Duty of mayors to enforce law. It shall be the duty of every mayor of every town or city in this state to cause this act to be diligently enforced and to cause the police officers of his city or town to arrest and to make complaint against any and all persons whom he or they know, or have reasonable cause to believe to be offenders against any of the provisions of this act.

History: En. Sec. 12, Ch. 115, L. 1907; Sec. 8427, Rev. C. 1907; re-en. Sec. 11170, R. C. M. 1921; Sec. 94-2415, R. C. M. 1947; redes. 94-8-415 by Sec. 29, Ch. 513, L. 1973.

94-8-416. (11171) Officers neglecting duty subject to forfeiture of office. Every county attorney, sheriff, mayor, constable, chief of police, marshal, or police officer who shall refuse or neglect to perform any of the duties imposed upon him by any of the provisions of this act, shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred nor more than three thousand dollars, or imprisonment for not less than six months nor more than one year in the county jail. A conviction under this section shall, unless set aside, also work a forfeiture of the office of such officer and operate as a removal from office. But a prosecution under this section shall not bar or interfere with any proceeding or action for removal from office which may be brought under any other provision of law or statute, nor affect or limit the effect or operation of any other statute regarding removals or suspensions from office.

History: En. Sec. 13, Ch. 115, L. 1907; Sec. 8428, Rev. C. 1907; re-en. Sec. 11171, R. C. M. 1921; Sec. 94-2416, R. C. M. 1947; redes. 94-8-416 by Sec. 29, Ch. 513, L. 1973.

94-8-417. (11172) Receiving money to protect offenders prohibited. Every state, county, city, or township officer, or other person, who shall ask for, receive, or collect any money or valuable consideration, either for his own or for the public use, or the use of any other person or persons, for and with the understanding that he will protect or exempt any person from arrest or conviction for any violation of the provisions of this act, or that he will abstain from arresting or prosecuting, or causing to be arrested or prosecuted, any person offending against any of the provisions of this act, or that he will permit any of the things prohibited by this act to be done or carried on, and every such state, county, city, or township officer who shall grant, issue, or deliver, or cause to be issued or delivered to any person or

persons, any license, permit, or other privilege giving or pretending to give any authority or right to any person or persons to carry on, conduct, open, or cause to be conducted or opened or carried on, any game or games which are forbidden by any of the provisions of this act, is guilty of a felony.

History: En. Sec. 14, Ch. 115, L. 1907; redes. 94-8-417 by Sec. 29, Ch. 513, L. Sec. 8429, Rev. C. 1907; re-en. Sec. 11172, 1973. Cal. Pen. C. Sec. 337.
R. C. M. 1921; Sec. 94-2417, R. C. M. 1947;

94-8-418. (11173) Losses at gambling may be recovered in civil action.

If any person, by playing or betting at any of the games prohibited by this act, loses to another person any sum of money, or thing of value, and pays or delivers the same, or any part thereof, to any person connected with the operating or conducting of such game, either as owner, or dealer, or operator, the person who so loses and pays or delivers may, at any time within sixty days next after the said loss and payment or delivery, sue for and recover the money or thing of value so lost and paid or delivered, or any part thereof from any person having any interest, direct or contingent, in the game, as owner, backer, or otherwise, with costs of suit, by civil action before any court of competent jurisdiction, together with exemplary damages, which in no case shall be less than fifty nor more than five hundred dollars, and may join as defendants in said suit, all persons having any interest, direct or contingent, in such game as backers, owners, or otherwise.

History: En. Sec. 15, Ch. 115, L. 1907; Sec. 8430, Rev. C. 1907; re-en. Sec. 11173, R. C. M. 1921; Sec. 94-2418, R. C. M. 1947; redes. 94-8-418 by Sec. 29, Ch. 513, L. 1973.

Constitutionality

The antigambling law was not rendered invalid by the insertion of this section. The right to exemplary damages thus given is in the nature of a penalty and constitutes a part of the penalty provided by the act. *State v. Ross*, 38 M 319, 99 P 1056.

Racing Entry Fee

A complaint in an action to recover the amount of two dollars lost by plaintiff as an alleged bet on a horse race, with exemplary damages, under this section, alleging in substance that defendant fair as-

sociation had given notice that it would conduct horse racing for purses, at which any owner or co-owner of a horse competing in the races would be required to pay an entrance fee of two dollars and that no person other than such owner or co-owners would be permitted to pay an entrance fee; that plaintiff, representing himself to be a co-owner of a certain horse, paid the required fee; that the horse did not win; that the purse plus an amount equal to the entrance fees for that horse was paid to the owners of the winning horse; that the purse was made up of funds belonging to the association and that the association did not have any interest in the outcome of the race, etc., did not state a cause of action and demurrer thereto was properly sustained. *Toomey v. Penwell*, 76 M 166, 245 P 943.

94-8-419. (11174) Action may be brought by any dependent person.

If any person losing such money or thing of value does not, within sixty days, without collusion or deceit, sue and with effect prosecute for the money or thing of value so lost and paid or delivered, any person, or a guardian of any person, dependent in any degree for support upon or entitled to the earnings of such persons losing said money or thing of value, or any citizen for the use of the person so dependent, may, within one year, sue for and recover the same, with costs of suit and exemplary damages as aforesaid, against any and all persons having any interest, direct or contingent, in the said game as backers, owners, or otherwise, as aforesaid.

History: En. Sec. 16, Ch. 115, L. 1907; redes. 94-8-419 by Sec. 29, Ch. 513, L. Sec. 8431, Rev. C. 1907; re-en. Sec. 11174, 1973.
R. C. M. 1921; Sec. 94-2419, R. C. M. 1947;

94-8-420. (11175) Pleadings in actions to recover moneys lost. In the prosecutions of such actions it shall be sufficient for the complaint to allege that the defendant is indebted to the plaintiff's use, the money or thing of value so lost and paid or delivered, whereby the plaintiff's action accrued to him, or to the person for whose use the suit is brought, without setting forth the special matter. In case suit is brought by a plaintiff for the use of another person, that fact and the name of the person for whose use the suit is brought shall be stated.

History: En. Sec. 17, Ch. 115, L. 1907; redes. 94-8-420 by Sec. 29, Ch. 513, L. Sec. 8432, Rev. C. 1907; re-en. Sec. 11175, 1973.
R. C. M. 1921; Sec. 94-2420, R. C. M. 1947;

94-8-421. (11176) Compelling testimony in such actions. Every person liable in a civil action under this act may be compelled to answer, upon oath, interrogatories annexed to the complaint in such civil action for the purpose of discovery of his liability; and upon discovery and repayment of the money or other thing, the person discovering and repaying the same, with costs and such an amount of exemplary damages as may be agreed upon by the parties, or fixed by the court, shall be acquitted and discharged from any further or other forfeiture, punishment, penalty, or prosecution he or they may have incurred for so winning such money or thing, discovered and repaid.

History: En. Sec. 18, Ch. 115, L. 1907; redes. 94-8-421 by Sec. 29, Ch. 513, L. Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, 1973.
R. C. M. 1921; Sec. 94-2421, R. C. M. 1947;

94-8-422. (11177) Lessor of buildings used for gambling purposes treated as principal. Whenever premises are occupied for the doing of any of the things, or running any of the games prohibited by this act, the lease or agreement under which they are so occupied shall be absolutely void at the instance of the lessor, who may at any time obtain possession by civil action, or by action of forcible detainer; and if any person lease premises for any such purpose, or knowingly permits them to be used or occupied for such purpose or purposes, or knowing them to be so occupied or used, fails immediately to prosecute, in good faith an action or proceeding for the recovery of the premises, such lessor shall be considered in all cases, civil and criminal, as a principal in running the games or doing the things run or done in such building, in violation of this act, and shall be dealt with and punished accordingly.

History: En. Sec. 19, Ch. 115, L. 1907; redes. 94-8-422 by Sec. 29, Ch. 513, L. Sec. 8434, Rev. C. 1907; re-en. Sec. 11177, 1973.
R. C. M. 1921; Sec. 94-2422, R. C. M. 1947;

94-8-423. (11178) Immunity of witnesses. No person shall be excused from attending or testifying or producing any books, papers, documents, or any thing or things, before any court or magistrate upon any investigation, proceeding or trial for a violation of any of the provisions of this act, upon

the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to convict him of a crime, or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence of, documentary or otherwise; and no testimony or evidence so given or produced shall be received against him in any civil or criminal proceeding, action, or investigation.

History: En. Sec. 20, Ch. 115, L. 1907; Sec. 8435, Rev. C. 1907; re-en. Sec. 11178, R. C. M. 1921; Sec. 94-2423, R. C. M. 1947; redes. 94-8-423 by Sec. 29, Ch. 513, L. 1973.

Failure to Claim Immunity

Even though it be assumed that this section is broad enough to include testimony before a grand jury it would have no application where defendant failed to claim either privilege or immunity when called before the grand jury. *State v. Saginaw*, 124 M 225, 220 P 2d 1021, distinguished in 130 M 299, 300 P 2d 952.

Grand Jury Testimony

The words "grand jury" should not be read into the phrase "court or magistrate." *State v. Saginaw*, 124 M 225, 220 P 2d 1021.

Defendant cannot, because of testimony before grand jury, be immune from prosecution for offense charged in information filed by county attorney weeks before impanelment of a grand jury. *State v. Saginaw*, 124 M 225, 220 P 2d 1021; *State v. McRae*, 124 M 238, 220 P 2d 1025, distinguished in 130 M 299, 300 P 2d 952.

94-8-424. (11179) Ordinances in conflict with this act void. Upon the passage of this act, all ordinances and parts of ordinances of cities and towns in this state regarding gambling and gambling houses shall be inoperative and void, and thereafter no ordinance regarding gambling or gambling houses shall be passed by any city or town.

History: En. Sec. 21, Ch. 115, L. 1907; Sec. 8436, Rev. C. 1907; re-en. Sec. 11179, R. C. M. 1921; Sec. 94-2424, R. C. M. 1947; redes. 94-8-424 by Sec. 29, Ch. 513, L. 1973.

94-8-425. (11181) Who deemed a principal. Any person who aids or abets in the commission of any of the acts herein declared to be unlawful, either by transmitting or communicating or transferring money or other thing of value, or information for the purpose of having bets or wagers made or reported or recorded or registered, shall be deemed a principal in the commission of such offense.

History: En. Sec. 3, Ch. 20, L. 1909; re-en. Sec. 3, Ch. 92, L. 1909; re-en. Sec. 2, Ch. 55, L. 1915; re-en. Sec. 11181, R. C. M. 1921; Sec. 94-2426, R. C. M. 1947; redes. 94-8-425 by Sec. 29, Ch. 513, L. 1973.

94-8-426. (11182) Violation of act a misdemeanor. Every person or persons violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 20, L. 1909; re-en. Sec. 4, Ch. 92, L. 1909; re-en. Sec. 3, Ch. 55, L. 1915; re-en. Sec. 11182, R. C. M. 1921; Sec. 94-2427, R. C. M. 1947; redes. 94-8-426 by Sec. 29, Ch. 513, L. 1973.

94-8-427. (11183) Act, when effective. This act is hereby declared to be necessary for the immediate preservation of the public peace, health, and

safety, and shall take effect from and after its passage and approval by the governor.

History: En. Sec. 5, Ch. 55, L. 1915; 2428, R. C. M. 1947; redes. 94-8-427 by re-en. Sec. 11183, R. C. M. 1921; Sec. 94- Sec. 29, Ch. 513, L. 1973.

94-8-428. Slot machines—possession unlawful. From and after the passage and approval of this act, it shall be a misdemeanor and punishable, as hereinafter provided, for any person to use, possess, operate, keep or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever.

History: En. Sec. 1, Ch. 197, L. 1949; Sec. 94-2429, R. C. M. 1947; redes. 94-8-428 by Sec. 29, Ch. 513, L. 1973.

94-8-429. Slot machine defined. A slot machine is hereby defined as a machine operated by inserting a coin, token, chip or trade check therein by the player and from the play of which he obtains, or may obtain, money, checks, chips or tokens redeemable in money. Merchandise vending machines where the element of chance does not enter into their operation are not within the provisions of this act.

History: En. Sec. 2, Ch. 197, L. 1949; Sec. 94-2430, R. C. M. 1947; redes. 94-8-429 by Sec. 29, Ch. 513, L. 1973.

94-8-430. Person or persons defined. In addition to their ordinary meaning, the word "person" or "persons," as used in this act, shall include both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders and societies, including religious, fraternal and charitable organizations.

History: En. Sec. 3, Ch. 197, L. 1949; Sec. 94-2431, R. C. M. 1947; redes. 94-8-430 by Sec. 29, Ch. 513, L. 1973.

94-8-431. Penalty for possession or permitting use of slot machine. Any person, partnership, club, society, fraternal order, corporation, co-operative association or any other person, individual or organization who violates any of the provisions of this act, or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied or controlled by him or it, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 197, L. 1949; Sec. 94-2432, R. C. M. 1947; redes. 94-8-431 by Sec. 29, Ch. 513, L. 1973.

Separability of Provisions

Section 6 of Ch. 197, Laws 1949 read "If any part of this act shall be declared by any court of competent jurisdiction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

Repealing Clause

Section 32 of Ch. 513, Laws 1973 read "Sections 94-101 through 94-103, 94-105 through 94-119, 94-201 through 94-206, 94-301 through 94-306, 94-501 through 94-506, 94-601 through 94-605, 94-701 through 94-705, 94-801 through 94-807, 94-809 through 94-811, 94-901 through 94-909, 94-1001 through 94-1011, 94-1101 through 94-1103, 94-1106, 94-1201 through 94-1209, 94-1301 through 94-1307, 94-1501 through 94-1519,

94-1601 through 94-1617, 94-1701 through 94-1707, 94-1801 through 94-1831, 94-1901 through 94-1904, 94-2001 through 94-2014, 94-2101 through 94-2104, 94-2202, 94-2301 through 94-2321, 94-2501 through 94-2515, 94-2601 through 94-2604, 94-2701 through 94-2726, 94-2801 through 94-2811, 94-2901 through 94-2919, 94-3109, 94-3111, 94-3202 through 94-3208, 94-3210, 94-3211, 94-3301 through 94-3344, 94-3401, 94-3402, 94-3501 through 94-3512, 94-3514 through 94-3521, 94-3523, 94-3524, 94-3528, 94-3533 through 94-3549, 94-3551 through 94-3554, 94-3556 through 94-3566, 94-3570 through 94-3572, 94-3574 through 94-3577, 94-3581 through 94-35-101, 94-35-104 through 94-35-108, 94-35-110 through 94-35-122, 94-35-124 through 94-35-134, 94-35-137 through 94-35-147, 94-35-149 through 94-35-151, 94-35-163 through 94-35-171, 94-35-175, 94-35-177 through 94-35-183, 94-35-187 through 94-35-198, 94-35-201, 94-35-202, 94-35-208 through 94-35-265, 94-35-269, 94-35-272, 94-35-274, 94-35-275, 94-3601 through 94-3619, 94-3701 through 94-3704, 94-3801 through 94-3813, 94-3901 through 94-3920, 94-4001 through 94-4005, 94-4101 through 94-4120, 94-4201 through 94-4208, 94-4301 through 94-4303, 94-4401 through 94-4427, 94-4501, 94-4502, 94-4601 through 94-4607, 94-4701 through 94-4715, 94-4718 through 94-4725, 94-4801, 94-4802, 94-4804, 94-4806, 94-4808, 94-4809, 94-5001 through 94-5005, 94-5101 through 94-5116, 94-5201, 94-5202, 94-5301 through 94-5314, 94-5501 through 94-5516, 94-5701 through 94-5706, 94-6414 through 94-6421, 94-6423 through 94-6425, 94-6429, 94-6808.1 through 94-6808.5, 94-7208, 94-7211 through 94-7220, 94-7240, 94-7307, 94-8508 through 94-

8510, 94-8803, 94-8804, 94-9001, 94-9005 through 94-9007, 94-9201 through 94-9214, 94-9307, 94-9901 through 94-9908, 94-401-1 through 94-401-3, 94-501-1 through 94-501-32, 94-801-1, 94-801-2, 94-1001-1 through 94-1001-11, 95-2006, 95-2206 R. C. M. 1947, and all acts and parts of acts in conflict herewith are repealed."

Effective Date

Section 33 of Ch. 513, Laws 1973 read "The Montana Criminal Code and all other provisions of this act are effective January 1, 1974, and shall apply to all offenses alleged to have been committed on or after that date. The Montana Criminal Code and all other provisions of this act do not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this act were not in force. For the purposes of this section, an offense was committed prior to the effective date of this act if any of the elements of the offense occurred prior thereto."

Separability Clause

Section 34 of Ch. 513, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CROSS REFERENCE TABLE—MONTANA CRIMINAL CODE OF 1973

Showing the location in the Criminal Code of 1973 (or other titles) of provisions similar to those contained in the original Title 94, Revised Codes of Montana, 1947

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
101	Construction of penal statutes	94-1-102(2)	General purposes and principles of construction
102	Provisions similar to existing law how construed	None	
103	Effect of code upon past offenses	94-1-103	Application to offenses committed before and after enactment
104	Repealed in 1947		
105	What intent to defraud is sufficient	94-2-101(53)	Definition of "purposely"
106	Civil remedies preserved	94-1-104(1)	Civil liability and remedies preserved
107	Proceedings to impeach or remove officers and others preserved	94-7-401(5)	Official misconduct
108	Authority of court-martial preserved—courts of justice to punish for contempt	94-1-104(2)	Contempt power preserved
109	Sections declaring crimes punishable — duty of court	95-2212 95-2206	Sentence to be imposed by judge Sentence
110	Punishments, how determined	None	
111	Witness' testimony may be read against him on prosecution for perjury	95-1807	Immunity of witnesses
112	Crime and public offense defined	94-2-101(15), (31) and (37)	Definitions of "felony," "misdemeanor" and "offense"
113	Crimes, how divided	94-2-101(15) and (31)	Definitions of "felony" and "misdemeanor"
114	Felony and misdemeanor defined	94-2-101(15) and (31)	Definitions of "felony" and "misdemeanor"
115	Punishment of felony, when not otherwise prescribed	95-2206 95-2206.4 94-1-105	Sentence When no felony penalty is specified Classification of offense
116	Punishment of misdemeanor, when not otherwise prescribed	95-2206.3	When no penalty is specified
117	To constitute crime there must be unity of act and intent	94-2-102 94-2-103 94-2-101 94-2-105	Voluntary acts General requirements of culpability General definitions Causal relationships between conduct and result

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
118	Intent, how manifested and who considered of sound mind	94-2-102 94-2-103 94-2-101 94-2-104 95-501 to 95-509	Voluntary acts General requirements of culpability General definitions Absolute liability Competency of the accused
119	Drunkenness no excuse for crime—when it may be considered—how in- sanity must be proven	94-2-109 95-501 to 95-509	Responsibility of intoxicated person Competency of the accused
201	Who are capable of com- mitting crimes	94-2-109 94-2-102 94-3-110 95-501 to 95-509	Responsibility of intoxicated person Voluntary acts Compulsion Competency of the accused
202	Who are liable to punish- ment	95-304	State criminal jurisdiction
203	Classification of parties to crime	94-2-106 94-2-107	Accountability for conduct of another When accountability exists
204	Who are principals	94-4-101 94-2-106	Solicitation Accountability
205	Who are accessories	94-7-303	Obstructing justice
206	Punishment of accessories	94-7-303 94-2-108	Obstructing justice Separate conviction of per- sons accountable
301	Penalty for abandonment or failure to support wife	94-5-608	Nonsupport
302	Orders which may be en- tered by the court	94-5-608(4) 95-2216(c)	Fine or forfeiture of bond Earnings of prisoners
303	Certain proof made prima facie evidence	94-5-607(3)	Evidence of violation of duty
304	Desertion or abandon- ment of child or ward a felony—suspension of sentence, when	94-5-607 94-5-608	Endangering the welfare of children Nonsupport
305	Disposing of child for mendicant business	None	
306	Cruelty to children	94-5-607 10-901 to 10-905	Endangering the welfare of children Reports of child neglect or abuse
401	Administering drugs, etc., with intent to produce miscarriage	94-5-611	No change in text
402	Submitting to an attempt to produce miscarriage	94-5-612	No change in text
501	Purpose of act—short title	None	
502	Arson — first degree — burning of dwellings	94-6-104	Arson
503	Arson — second degree —burning of buildings, etc., other than dwell- ings	94-6-103 94-6-102	Negligent arson Criminal mischief

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
504	Arson—third degree— burning of other prop- erty	94-6-102	Criminal mischief
505	Arson—fourth degree— attempt to burn build- ings or property	94-4-103 94-4-101	Attempts Solicitation
506	Burning to defraud in- surer	94-6-102(c)	Criminal mischief
601	Assault in first degree	94-5-202	Aggravated assault
602	Assault in second de- gree	94-5-201 94-5-202	Assault Aggravated assault
603	Assault in third degree	94-5-201	Assault
604	Assaults with caustic chemicals, etc.	94-5-202	Aggravated assault
605	Use of force not unlawful	94-3-102 94-3-103 94-3-104 94-3-105 94-3-106 94-3-107 95-602(b)	Use of force in defense of person Use of force in defense of occupied structure Use of force in defense of other property Use of force by aggressor Use of force to prevent es- cape Use of force by parent Method of arrest
701	Bigamy defined	94-5-604	Bigamy
702	Exceptions	94-5-604(1)(c)	Invalid judgment of divorce or annulment
703	Punishment for bigamy	94-5-604(2)	Punishment for bigamy
704	Marrying a husband or wife of another	94-5-605	Marrying a bigamist
705	Incest	94-5-606	Incest
801	Giving bribes to judges, jurors, referees, etc.	94-7-102	Bribery in official and politi- cal matters
802	Receiving bribes by ju- dicial officers, jurors, etc.	94-7-102	Bribery in official and politi- cal matters
803	Extortion	94-7-102(c)	Bribery in official and politi- cal matters
804	Improper attempts to in- fluence jurors, referees, etc.	94-7-102 94-7-103	Bribery in official and politi- cal matters Threats and other improper influence in official and political matters
805	Misconduct of jurors, ref- erees, etc.	94-4-103 94-4-101 94-7-103 94-7-401(1)(a)	Attempt Solicitation Threats and other improper influence in official and political matters Official misconduct
806	Embracery	94-7-102 94-7-103	Bribery in official and politi- cal matters Threats and other improper influence in official and political matters

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
807	Misconduct of officers having charge of jury	94-7-103(e) 94-7-401	Threats and other improper influence in official and political matters Official misconduct
808	Justice or constable pur- chasing judgment	16-3607	No change in text
809	Convicted officer to for- feit and be disqualified from holding office	94-7-401(4)	Official misconduct
810	Bribery of school trustees	94-7-102	Bribery in official and politi- cal matters
811	Offender a competent wit- ness	95-1807	Immunity from prosecution
901 to 903	Burglary	94-6-204	Burglary
904	Word "enter" defined	94-6-201	Definition of terms
905	Nighttime defined	None	
906, 907	Burglary with explosives	94-6-204	Burglary
908	Possession of burglarious instruments	94-6-205	Possession of burglary tools
909	Carrying a deadly weap- on	94-5-202 94-4-103	Aggravated assault Attempt
1001 to 1011	Common nuisance — al- cohol, opium, prostitu- tion, and gambling	94-8-107	Public nuisances
1101	Criminal conspiracy	94-4-102	Conspiracy
1102	No other conspiracies punishable criminally	None	
1103	Overt act, when necessary	94-4-102(1)	Conspiracy
1104	Unlawful trusts and mo- nopolies	51-401	No change in text
1105	Certain agreements be- tween laborers ex- cepted	51-402	No change in text
1106	Persons not to be excused from testifying	95-1807	Immunity from prosecution
1107 and 1108	Discrimination in pur- chase price of commod- ities	51-403 and 51-404	No change in text
1109	Penalty for discrimina- tion in purchases	51-405	Minor changes in text
1110 to 1112	Cumulative remedies, dis- crimination in sales	51-406 to 51-408	No change in text
1113	Penalty for discrimina- tion in sales	51-409	Minor changes in text
1114 to 1118	Cumulative remedies, pooling by warehouse- men, destruction of food	51-410 to 51-414	No change in text
1201	Overdriving animals	94-8-106(1)(a)	Cruelty to animals
1202	Abandonment of disabled animals	94-8-106(1)(c)	Cruelty to animals
1203	Failure to provide proper food and drink to im- pounded animals	94-8-106(1)(b)	Cruelty to animals

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
1204	Carrying an animal in a cruel manner	94-6-102 94-8-106	Criminal mischief Cruelty to animals
1205	Poisoning animals	94-6-102	Criminal mischief
1206	Keeping cows in un- healthy places	94-8-106	Cruelty to animals
1207	Promoting fights between animals	94-8-106	Cruelty to animals
1208	Killing, maiming or poi- soning livestock	94-8-106	Cruelty to animals
1209	Killing, maiming or poi- soning livestock—com- plaint	None	
1301	Duel defined	94-5-201 94-8-101	Assault Disorderly conduct
1302	Punishment for fighting a duel, when death en- sues	94-5-102 94-5-104 94-8-105	Deliberate homicide Negligent homicide Use of force by aggressor
1303	Punishment for fighting a duel, although death does not ensue	94-5-202 94-5-201 94-8-101	Aggravated assault Assault Disorderly conduct
1304	Posting for not fighting	94-5-203	Intimidation
1305, 1306	Officers must prevent duels. Evading dueling laws	None	
1307	Witness' privilege	95-1807	Immunity of witness
1401 to 1476	Election frauds and of- fenses	23-4701 et seq.	Miscellaneous amendments and repeals
1501	Embezzlement by public officer	94-7-209 94-7-401 94-6-302	Tampering with public rec- ords or information Official misconduct Theft
1502 to 1504	Officers neglecting to pay over public moneys and fines	94-6-302 94-7-401	Theft Official misconduct
1505	Obstructing officer in col- lecting revenue	94-7-302	Obstructing a peace officer or public servant
1506	Refusing to give assessor list of property or giv- ing false name	94-7-302 94-7-204 84-412	Obstructing a peace officer or public servant Unsworn falsification to au- thorities Powers of department
1507	Making false statement, not under oath in refer- ence to taxes	94-7-204 94-7-203	Unsworn falsification to au- thorities False swearing
1508	Delivering receipts for poll taxes other than prescribed by law, or collecting poll taxes, etc. without giving the receipt prescribed by law	94-7-401	Official misconduct
1509	Having blank receipts for licenses other than those prescribed by law	94-7-401 94-6-302	Official misconduct Theft

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
1510	Refusing to give name of person in employment	94-7-302(1) 84-4950, 84-4954	Obstructing a peace officer or public servant Violations by employer
1511	Carrying on business without license	84-3209	Penalty for failure to procure license
1512	Unlawfully acting as auctioneer	66-228	Penalty—public auction
1513	Officer charged with collection, etc., of revenue, refusing to permit inspection of his books	94-7-302	Obstructing a peace officer or public servant
1514	Board of examiners, auditor and treasurer neglecting certain duties	94-7-401	Official misconduct
1515	Having state arms, etc.	94-6-302	Theft
1516	Selling state arms, etc.	94-6-302	Theft
1517	Sheriff falsely representing accounts	94-7-401 94-6-302 25-225, 25-229	Official misconduct Theft Sheriff, penalties
1518	Trespass on public property	94-6-203	Criminal trespass to property
1519	Limitations on preceding section	None	
1601, 1602	Extortion	94-5-203 94-5-301 94-6-302(2) 94-6-307	Intimidation Unlawful restraint Theft Deceptive practices
1603	Punishment of extortion in certain cases	94-6-302	Theft
1604	Obtaining signature by means of threats	94-6-302 94-6-307	Theft Deceptive practices
1605	Compulsion to execute instrument	94-6-302 94-6-307	Theft Deceptive practices
1606	Oppression committed under color of official right	94-6-302 94-5-201 94-5-302 94-7-210	Theft Assault Kidnaping Impersonating a public officer
1607, 1608	Extortion committed under color of official right	94-7-401 94-6-302 94-7-210	Official misconduct Theft Impersonating a public officer
1609	Blackmail	94-6-302 94-5-203	Theft Intimidation
1610	Written threats	94-5-203	Intimidation
1611	Verbal threats	94-6-302 94-5-203	Theft Intimidation
1612	Unlawful threat referring to act of third party	94-6-302	Theft
1613	Employee of railroad company taking more fare, etc.	94-6-302 94-6-307	Theft Deceptive practices

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
1614	Requiring release of liability, etc.	94-5-203 13-803	Intimidation Employer's rights
1615	Extortion—refusal to pay wages without discount	94-6-302 94-5-203 41-1302	Theft Intimidation Penalty for failure to pay
1616	Receipt or solicitation of gifts by foreman from employees	94-5-203 94-6-302	Intimidation Theft
1617	Immunity of witnesses	95-1807	Immunity of witnesses
1701	Offering false evidence	94-7-203 94-7-204 94-7-208	False swearing Unsworn falsification to authorities Tampering with or fabricating physical evidence
1702	Deceiving a witness	94-7-204 94-7-208 94-7-207	Unsworn falsification to authorities Tampering with or fabricating physical evidence Tampering with witness and informants
1703	Preparing false evidence	94-7-208(1)(b)	Tampering with or fabricating physical evidence
1704	Destroying evidence	94-7-208(1)(a)	Tampering with or fabricating physical evidence
1705	Preventing or dissuading witness from attending	94-5-203 94-7-207	Intimidation Fabricating physical evidence
1706	Bribing witness	94-7-102 94-7-207 94-5-203	Bribery in official and political matters Tampering with witnesses and informants Intimidation
1707	Receiving or offering to receive bribes	94-7-102	Bribery in official and political matters
1801	Marrying under false personation	94-7-203	False swearing
1802	Falsely personating another in other cases	94-6-102 94-7-203 94-7-204 94-7-209	Criminal mischief False swearing Unsworn falsification to authorities Tampering with public records or information
1803	False statement respecting financial condition	94-6-307 94-6-302	Deceptive practices Theft
1804	Receiving property in a false character	94-6-302	Theft
1805	Obtaining money, property or services by false pretenses	94-6-307 94-6-302	Deceptive practices Theft
1806	Confidence games	94-6-302 94-6-307	Theft Deceptive practices
1807	Selling land twice	94-6-302 94-6-301(49)	Theft Definition of "property"

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
1808	Married person selling land under false repre- sentations	94-6-302 94-6-307	Theft Deceptive practices
1809	Mock auction	94-6-302 94-6-310 94-6-301 94-6-307	Theft Forgery Definition of terms Deceptive practices
1810	Consignee, false state- ment by	94-6-307 94-6-302	Deceptive practices Theft
1811	Selling or removing mort- gaged property to de- fraud mortgagee	94-6-313	Defrauding creditors Removing mortgaged prop- erty
1812	Conditional sale or lease —removal, sale or con- cealment of property to defraud vendor or lessor	94-6-313	Defrauding creditors Removing mortgaged prop- erty
1813	False pedigree of ani- mals, etc.	94-6-307 94-6-310	Deceptive practices Forgery
1814	Selling animal with false pedigree	94-6-307 94-6-308	Deceptive practices Deceptive business practices
1815	Use of false pretenses in selling mines	94-6-307	Deceptive practices
1816	Interference with sam- ples for assay	94-6-302	Theft
1817 to 1823	False samples advertis- ing, personation and credit cards	94-6-307 94-6-308	Deceptive practices Deceptive business practices
1824	Unlawful to obtain com- munication services without intention to pay	94-6-302 94-6-304	Theft Theft of labor or service or use of property
1825 to 1830	False use of credit cards	94-6-310 94-6-307 95-402	Forgery Deceptive practices Venue
1831	Obtaining accommoda- tions with intent to de- fraud	94-6-304	Theft of labor or service or use of property
1832 to 1834	Chain distributor schemes	94-6-308.1	No change in text
1901 to 1904	False weights and meas- ures	Title 90, ch. 1 94-6-302 94-6-308	Weights and measures Theft Deceptive business practices
2001	Forgery of wills, convey- ances, etc.	94-6-310	Forgery
2002	Making false entries in records or returns	94-6-310	Forgery
2003	Forgery of public or cor- porate seal	94-7-204 94-6-310	Unsworn falsification to au- thorities Forgery
2004	Punishment of forgery	94-6-310	Forgery

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
2005	Forging telegraphic mes- sages	94-6-310	Forgery
2006	Possessing or receiving forged or counterfeit bills or notes with in- tent to defraud	94-6-310	Forgery
2007	Making, passing or utter- ing fictitious bills, etc.	94-6-309	Issuing a bad check
2008 to 2014	Forgery and counterfeit- ing	94-6-310	Forgery
2101 to 2104	Fraudulent conveyances	94-6-313 29-101 to 29-113	Defrauding creditors Fraudulent conveyances
2201	Repealed in 1947		
2202	Presenting false proofs upon policy of insur- ances	94-6-302 94-6-307 94-6-310 94-6-102	Theft Deceptive practices Forgery Criminal mischief
2301	Fraud in publishing false statement of concern	94-6-308 94-6-307	Deceptive business practices Deceptive practices
2302	Frauds in subscription for stock of corpora- tions	94-6-310 94-6-302	Forgery Theft
2303	Fraudulent issue of stock, scrip, etc.	94-6-302	Theft
2304	Frauds in procuring or- ganizations, etc., of corporation	94-7-204 94-6-310	Unsworn falsification to au- thorities Forgery
2305	Unauthorized use of name in prospectus, etc.	94-6-307 94-6-310	Deceptive practices Forgery
2306	Misconduct of directors of stock corporation	94-2-113 94-6-302	Accountability for conduct of corporation Theft
2307	Savings bank officer over- drawing his account	94-6-302	Theft
2308	Frauds in keeping ac- counts in books of cor- poration	94-6-302	Theft
2309	Officer of corporation publishing false reports	94-6-307	Deceptive practices
2310	Officer of corporation re- fusing to permit an in- spection	None	
2311, 2312	Officer of railroad com- pany contracting debt in its behalf exceeding its available means	94-2-113 94-6-302	Accountability for conduct of corporation Theft
2313	Director of corporation presumed to have knowledge	94-2-113	Accountability for conduct of corporation
2314	Director present at meet- ing, when presumed to have assented to pro- ceedings	94-2-107 94-2-113	When accountability exists Accountability for conduct of a corporation

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
2315	Director absent from meetings, when presumed to have assented to proceedings	94-2-107 94-2-113	When accountability exists Accountability for conduct of corporation
2316	Offenses relating to foreign corporations	94-2-112	Criminal responsibility of corporations
2317	Foreign corporations doing business in violation	None	
2318	Agent not complying with foreign corporation requirements	94-2-108	Separate conviction of persons accountable
2319	Corporation not complying with laws	None	
2320	Agent of noncomplying corporation	94-2-108	Separate conviction of persons accountable
2321	Director defined	None	
2322 to 2325	Frauds in management of corporations	15-22-141 to 15-22-144	No change in text
2401 to 2424	Gambling	94-8-401 to 94-8-424	No change in text
2425	Repealed in 1965		
2426 to 2432	Gambling, slot machines	94-8-425 to 94-8-431	No change in text
2501	Murder defined	94-5-101 94-5-102	Criminal homicide Deliberate homicide
2502	Malice defined — express or implied	None	
2503	Degrees of murder	94-5-101(2)	Classes of criminal homicide
2504	Repealing clause	None	
2505	Punishment for murder	94-5-102 94-5-103 94-5-104	Deliberate homicide Mitigated deliberate homicide Negligent homicide
2506	Petit treason abolished	None	
2507, 2508	Manslaughter, voluntary and involuntary	94-5-103 94-5-104	Mitigated deliberate homicide Negligent homicide
2509	Deceased must die within a year and a day	None	
2510	Proof of corpus delicti	95-3004(a)	The burden in homicide trial
2511	Excusable homicide	94-3-101 to 94-3-112	Justifiable use of force
2512	Justifiable homicide by public officer	94-3-109 94-3-106	Execution of death sentence Use of force to prevent escape
2513 to 2515	Justifiable and excusable homicide and bare fear	94-3-102 94-3-103	Use of force in defense of person Use of force in defense of dwelling

CRIMINAL CODE OF 1973

B.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
		94-3-104	Use of force in defense of other property
		94-3-105	Use of force by aggressor
		94-3-106	Use of force to prevent escape
		95-602	Arrest
2601	Kidnaping—place of trial	94-5-302	Kidnaping
		95-411	Venue
2602	Kidnaping with intent to send person from state or confine within state—place of trial	94-5-303	Aggravated kidnaping
		95-411	Venue
2603	Enticing away child	94-5-305	Custodial interference
2604	Prisoner holding hostage	94-5-303	Aggravated kidnaping
2701	Larceny defined	94-6-302	Theft
2702	Uttering fraudulent check or drafts—evidence	94-6-309	Issuing a bad check
2703, 2704	Grand and petit larceny	94-6-302	Theft
2704.1	Possession of stolen livestock as evidence of larceny	94-6-314	Effect of possession of stolen property
2705	Petit larceny defined	94-6-302	Theft
2706	Punishment of grand larceny	94-6-302	Theft
2707	Punishment of petit larceny	94-6-302	Theft
2708	Dogs, property	94-2-101(49)	Definition of "property"
2709	Larceny of lost property	94-6-303	Theft of lost or mislaid property
2710	Larceny of written instruments	94-2-101(49)	Definition of "property"
2711	Value of passage tickets	94-2-101(49)	Definition of "property"
2712	Written instruments completed but not delivered	94-6-302	Theft
		94-2-101(49)	Definition of "property"
2713	Severing and removing part of the realty	94-2-101(49)	Definition of "property"
		94-6-302	Theft
2714	Larceny and receiving stolen property out of the state	94-6-302	Theft
		95-304	Venue
2715	Conversion by fiduciary, larceny	94-6-302	Theft
2716	Verbal false pretense, not larceny	94-2-101(11)(a)	Definition of "deception"
2717	Claim of title, restoration of property as defense	94-6-306	Offender's interest in the property
2718, 2719	Larceny of water, gas and electricity	94-6-302	Theft
		94-2-101(49)	Definition of "property"
2720	False device for measuring gas, water, electricity	94-2-101(49)	Definition of "property"
		94-6-302	Theft
		94-6-304	Theft of labor, services or use of property

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
2721	Receiving stolen property	94-6-302 94-6-314	Theft Effect of possession of stolen property
2722	Larceny, destruction etc., of records by officers	94-7-209	Tampering with public records or information
2723 to 2726	Larceny and falsification of public records and jury lists	94-7-209	Tampering with public records or information
2801, 2802	Libel	94-8-111	Criminal defamation
2803	Malice presumed	None	
2804 to 2809	Libel	94-8-111	Criminal defamation
2810	Threatening libel to extort	94-6-302(2)	Theft
2811	Giving false information for publication	94-8-111	Criminal defamation
2901	Preventing the meeting or organization of legislative assembly	94-7-302 94-8-101	Obstructing a peace officer or public servant Disorderly conduct
2902	Disturbing the legislative assembly while in session	94-7-302 94-8-101(1)(g)	Obstructing a peace officer or public servant Disorderly conduct
2903	Altering draft of bill or resolution	94-7-209	Tampering with public records or information
2904	Altering engrossed or enrolled copy of bill or resolution	94-7-209	Tampering with public records or information
2905 to 2909	Legislative bribes	94-7-102	Bribery in official and political matters
2910	Solicitation of bribery	94-7-102 94-4-101	Bribery in official and political matters Solicitation
2911	Personal interest in bill	94-7-401	Official misconduct
2912	Witnesses refusing to attend	43-401 to 43-405	Witnesses before the legislative assembly
2913	Lobbying	95-1807 94-7-102(1)	Immunity from prosecution Bribery
2914	Members of legislative assembly, in addition to other penalties to forfeit office, etc.	94-7-401(4)	Official misconduct
2915 to 2919	Legislative bribes	94-7-102	Bribery in official and political matters
3001 to 3011	Lotteries	94-8-301 to 94-8-311	No change in text
3101 to 3108	Machine Gun Act	94-8-201 to 94-8-208	No change in text
3109	Search warrant	None	
3110	Uniformity of interpretation	94-8-209	No change in text
3111	Short title	None	

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
3201	Repealed in 1965		
3202	Injuries to milestones, guideposts, trees	94-6-102	Criminal mischief
3203	Tampering with tele- graph, telephone, and electric system	94-6-102 94-6-302	Criminal mischief Theft
3204	Taking water from or obstructing canals	94-6-102 94-6-302	Criminal mischief Theft
3205, 3206	Interference with rail- road property	94-6-102	Criminal mischief
3207	Acts causing death pun- ished as murder	94-5-102	Deliberate homicide
3208	Remove waste or packing from locomotives or motors	94-8-108 94-6-102	Creating a hazard Criminal mischief
3209	Repealed in 1963		
3210	Highway construction — leaving hard substance on railroad intersection	94-8-108	Creating a hazard
3211	Removal, injury or de- struction of telephone, telegraph and electric facilities	94-6-102	Criminal mischief
3301	Malicious injury or de- struction of property	94-6-102	Criminal mischief
3302	Specification in following sections not restriction	None	
3303	Burning buildings, etc., not the subject of arson	94-6-104 94-6-102 94-6-103	Arson Criminal mischief Negligent arson
3304	Destruction of buildings by explosives	94-6-102 94-6-104	Criminal mischief Arson
3305	Use of automobiles with- out consent of owners	94-6-203 94-6-202 94-6-305	Criminal trespass to property Criminal trespass to vehicles Unauthorized use of motor vehicles
3306, 3307	Possessing automobile from which number or marks have been re- moved or altered	94-6-311	Obscuring the identity of a machine
3308	Malicious injuries to free- hold	94-6-102	Criminal mischief
3309	Injuring fences, building fires, and hunting on premises of another when forbidden	94-6-201 94-6-203 94-6-102	Definition of terms Criminal trespass to prop- erty Criminal mischief
3310	Injuries to standing crops	94-6-102	Criminal mischief
3311	Removing, defacing or altering landmarks	94-7-209 94-6-102	Tampering with public rec- ords or information Criminal mischief
3312 to 3314	Fences and dams—ma- licious mischief gen- erally	94-6-102	Criminal mischief
3315	Burning or injuring rafts, setting adrift vessels	94-6-103 94-6-104 94-6-102	Negligent arson Arson Criminal mischief
3316	Obstructing navigable waters	94-8-107(1)(c)	Public nuisance

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
3317	Injuries to United States surveyor's monuments	94-7-209	Tampering with public rec- ords or information
		94-6-102	Criminal mischief
3318	Destroying or tearing down notices	94-7-209	Tampering with public rec- ords or information
		94-6-102	Criminal mischief
3319	Injuring or destroying written instrument	94-6-102	Criminal mischief
3320 to 3323	Letters and telegrams	94-8-114	Privacy in communications
3324 to 3326	Destroying art, literature and malicious mischief generally	94-6-102	Criminal mischief
3327, 3328	Setting and negligent control of fires	28-115	Failure to extinguish fire
		94-6-103	Negligent arson
3329	Setting fire to timber, etc., maliciously	28-115	Failure to extinguish fire
		94-6-104	Arson
3330	Exposing infected cloth- ing or person	69-4509	Duties of public health of- ficers
3331	Driving animals on a sidewalk	94-8-101(1) (e) or (i)	Disorderly conduct
3332	Malicious spiking of saw logs	94-6-102	Criminal mischief
3333	Defacing public buildings	94-6-102	Criminal mischief
3334	Injury to trees on public lands	94-6-102	Criminal mischief
3335 to 3344	Malicious mischief gen- erally	None	
3401, 3402	Mayhem	94-5-202	Aggravated assault
3501	Administrator, etc., must file report—penalty	94-7-401 Title 91, ch. 5	Official misconduct
		Title 91, ch. 6	Escheated estates—inheri- tance by nonresident aliens —disposal of unclaimed property
			Probate proceedings—public administrator
3502	Adulterating foods, drugs, liquors, etc.	4-1-201	Sale of liquor unlawful— foreign substance in liquor —possession of liquor
		27-703	Prohibited acts enumerated
		27-705	Criminal penalties for pro- hibited acts—reliance on guaranty or undertaking as defense
		27-710	Adulterated food defined
		66-1524	Quality of drugs sold—adul- teration
		94-6-308	Deceptive business practices
3503	Adulterated candies	27-703	Prohibited acts enumerated
		27-705	Criminal penalties for pro- hibited acts—reliance on guaranty or undertaking as defense
		27-710	Adulterated food defined
		94-6-308	Deceptive business practices

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
3504	Altering brands	94-6-312	Illegal branding or altering or obscuring a brand
3505	Apothecary omitting to label drugs or labeling them wrongfully, etc.	94-6-308 66-1510 66-1515 66-1523 66-1502	Deceptive business practices Sale of poisons regulated Penalty for violation of act Wrongful labeling Terms defined
3506	Arrests, seizures or levy upon property, dispos- session of lands with- out lawful authority, issuance by justice of the peace of writs or process signed or proc- ess signed in blank	94-7-401 93-7702	Official misconduct Duties of justice of the peace
3507	Attorneys — misconduct by	93-2105 93-2106 93-2108 94-6-302	Punishment for deceit Punishment for willful delay Certain other transaction prohibited—penalty Theft
3508	Attorneys — buying de- mands or suits by	93-2107, 93-2108	Attorney acquiring claims for purpose of bringing action
3509	Attorney forbidden to de- fend prosecutions car- ried on by their part- ners or formerly by themselves	93-2111 93-2112, 93-2114	Partner of public prosecutor not to defend, etc. Former public prosecutors not to defend, etc.
3510	Attorney may defend self	93-2116	Attorney may defend in per- son when prosecuted
3511, 3512	Barber business, conduct- ing on Sunday	None	
3513	Repealed in 1953		
3514	Brands—sash or frying pan prohibited	94-6-312 46-603 46-604 46-606 46-608	Illegal branding or altering or obscuring a brand Recording of brands required Application for recording record of brands Right of owner of recorded brand Penalty for violation of act
3515, 3516	Branding stock driven in- to or through state re- quired	Title 46, ch. 6 94-6-310	Brands—recording Forgery
3517 to 3520	Branding — miscella- neous offenses	Title 46, ch. 6	Brands—recording
3521	Fines, disposition	None	
3522	Branding cattle running at large	46-1720	No change in text
3523	Bribing members of city or town councils, boards of county com- missioners or trustees	94-7-102	Bribery in official and politi- cal matters
3524	Bringing armed men into the state	94-7-504	Bringing armed men into the state
3525 to 3527.1	Carrying concealed weap- ons	94-8-210 to 94-8-213	No change in text

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
3528	Arrest without warrant	94-7-401	Official misconduct
3529 to 3532	Concealed weapons—permit	94-8-214 to 94-8-217	No change in text
3533, 3534	Common barratry	93-2105	Punishment for deceit
3535	Compounding crimes	94-7-305	Compounding a felony
3536, 3537	Compulsory company boarding houses	None	
3538	Resisting process after county declared in state of insurrection	94-7-302	Obstructing a peace officer or public servant
3539	Incestuous or forbidden marriages	94-5-605, 94-5-606 94-2-107 94-7-401	Marrying a bigamist When accountability exists Official misconduct
3540	Criminal contempt	94-7-309	Contempt
3541	Cruel treatment of luna- tics, etc.	None	
3542	Dead animals—offal, etc., putting in street, riv- ers, etc.	69-4518 69-4519	Dead animals—unlawful dis- position Penalty
3543	Deadly weapons exhibit- ing in rude, etc., man- ner or using unlawfully	94-5-201 94-8-101	Assault Disorderly conduct
3544	Death from explosions, etc.	94-5-104	Negligent homicide
3545	Death from collision on railroads	94-5-104	Negligent homicide
3546	Death from mischievous animals	94-5-104	Negligent homicide
3547	Debtor fraudulently con- cealing his property	94-6-313	Defrauding creditors
3548	Litigant fraudulently concealing his property	94-6-313	Defrauding creditors
3549	Defacing marks on logs, lumber or wood	94-6-102	Criminal mischief
3550	Repealed in 1967		
3551, 3552	Depositing coal slack in streams	69-4905 69-4908 69-4806	Prohibited acts Penalty Pollution unlawful—permits
3553	Disclosing indictment found	94-7-401 95-1409	Official misconduct Secrecy of proceedings and disclosure
3554	Disclosing what tran- spired before the grand jury	95-1409 94-7-401	Secrecy of proceedings and disclosure Official misconduct
3555	Discharged employees, protection	41-1325	No change in text

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
3557, 3558	Discrimination by hospitals	64-301	Freedom from discrimination as civil right—employment—public accommodation
		64-303	Discrimination as a misdemeanor
		69-5217, 69-5221	Discrimination among patients of physicians
		69-5313	Discrimination prohibited in subsidized facilities
3559	Diseased animals	46-236	Duty to report contagious diseases
		46-237	Diseased animals not to run at large—burial of carcasses
		46-238	Penalty for violation
3560 to 3563	Disturbing the peace	94-8-101	Disorderly conduct
3564	Police power of railroad conductors	None	
3565	Ditch overflowing on highway	94-8-107	Public nuisance
3566	Divorce—advertising to procure	None	
3567 to 3569	Livestock — miscellaneous offenses	46-3001 to 46-3003	No change in text
3570 to 3572	Entertainment in establishments licensed to sell beer	None	
3573	Repealed in 1959		
3574	Exhibiting deformities of persons	None	
3575	Exposing person infected with any contagious disease in a public place	69-4509	Functions, powers and duties of local boards of health
3576	False imprisonment	94-5-301	Unlawful restraint
3577	Fences, unlawful and dangerous	46-1403	Barbed wire fences to be kept in repair
		46-1404	Fallen wire fencing declared nuisance—abatement
3578 to 3578.2	Firing firearms	94-8-218 to 94-8-220	No change in text
3579, 3580	Firearms, use by children	94-8-221, 94-8-222	No change in text
3581 to 3583	Flag desecration	94-7-502	Desecration of flag
3584	Forcible entry and detainer	94-6-203	Criminal trespass to property
3585 to 3587	Fortunetelling	None	
3588	Fraudulent practices to affect the market price	94-6-302	Theft
		94-6-307(b)	Deceptive practice
3589	Fraudulent pretenses relative to birth of infant	94-7-209	Tampering with public records or information
		69-4413	Births—compulsory registration
		69-4436	False statements or information contained in records relating to vital statistics

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
3590	Fraudulent pretenses — substituting one child or another	94-5-301 94-5-302	Unlawful restraint Kidnaping
3591, 3592	Gas masks for employees handling crude oil and gas	41-1710, 41-1718	Employers to furnish and require safety devices and practices
3593, 3594	Glanders—disposition of infected animal	46-211 46-238 46-903, 46-905	Promulgation of rules Penalty for violation of act Quarantine of diseased ani- mals—proceeds from sale of stock
3595	Grand juror acting after challenge has been al- lowed	94-7-210	Impersonating a public of- ficer
3596	Habeas corpus, refusing to issue or obey writ	94-7-401 95-2710	Official misconduct Production of person
3597	Reconfining persons dis- charged on habeas cor- pus	94-7-401 94-5-302 95-2710	Official misconduct Kidnaping Production of person
3598	Concealing persons en- titled to habeas corpus	95-2710 94-7-401 94-5-305	Production of person Official misconduct Custodial interference
3599	Health laws—willful vio- lation	69-5701	Violations of public health laws or rules of state board of health
35-100	Health laws—neglecting to perform duties	94-7-401 69-5701	Official misconduct Violations of public health laws or rules of state board of health
35-101	Horses, etc., taking up or restraining without owner's consent	94-6-102	Criminal mischief
35-102, 35-103	Repealed in 1953		
35-104	Innkeepers and carriers refusing to receive guests	64-301 to 64-303	Freedom from discrimination
35-105	Inspection of mines, un- safe dams and reser- voirs	95-2206.3	When no penalty is specified
35-106	Intoxicating liquors—giv- ing or selling to minor	94-5-609	Unlawful transactions with minors
35-106.1	Jurisdiction of offenses	95-302 95-304	Jurisdiction of justices of peace State criminal jurisdiction
35-106.2	Possession of beer or liq- uor by minor	94-5-610	Possession of intoxicating substances by minors
35-107	"Intoxicating" liquor de- fined	94-2-101(25)	Definition of "intoxicating substance"
35-108	Intoxicated physicians	None	
35-109	Intoxication of engineers, conductors or drivers of locomotives or cars	72-671	No change in text
35-110	Issuing fictitious bills of lading, etc.	94-6-310 94-6-302	Forgery Theft
35-111	Issuing fictitious ware- house receipts	94-6-310 94-6-302	Forgery Theft

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
35-112	Erroneous bills of lading or receipts issued in good faith	None	
35-113	Duplicate receipts marked "duplicate"	94-6-310 94-6-302	Forgery Theft
35-114	Selling, etc., property received for transportation or storage	94-6-302	Theft
35-115	Issuing or circulating paper money	94-6-310 94-6-302	Forgery Theft
35-116	Leaving gates open	94-6-102(d)	Criminal mischief
35-117 to 35-120	Obstructing shoreline	94-8-107	Public nuisance
35-121	False return or record of marriage	94-7-401 94-7-204 48-124	Official misconduct Unsworn falsification to authorities Penalty for failure to return or record
35-122	Maliciously procuring warrant	94-7-203	False swearing
35-123	Repealed in 1969		
35-124	Penalty for violation	None	
35-125	Mining shafts, drifts or cuts to be covered or fenced	94-8-108(b)	Creating a hazard
35-126 to 35-134	Mine shafts	None	
35-135, 35-136	Repealed in 1947		
35-137	Minors, admission to place of prostitution	10-617	Penalty for improper and negligent training of children
35-138	Minors under sixteen, permitting to frequent dance halls	None	
35-139	Obstructing attempts to extinguish fires	94-7-302	Obstructing a peace officer or public servant
35-140	Obstructing ford near ferry	None	
35-141	Omission of duty by public officer	94-7-401	Official misconduct
35-142	Offense for which no penalty is prescribed	95-2206.3	When no penalty is specified
35-143	Oppression and injury by an officer	94-7-401 94-8-113	Official misconduct Mistreating prisoners
35-144	Officers of fire departments issuing false certificates of exemption	94-7-401 11-2004, 11-2005	Official misconduct Exemption certificates
35-145 to 35-147	Oleomargarine, labeling and notice	94-6-308	Deceptive business practices
35-148	Repealed in 1969		
35-149, 35-150	Personating officer	94-7-210	Impersonating a public servant

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
35-151	Pesthouse — establishing or keeping within cit- ies, towns, etc.	69-4509 69-5213	Functions, powers and du- ties of local boards of health Rules and standards for long- term care facilities — adoption and publication by state board of health
35-152 to 35-152.18	Repealed in 1965		
35-153 to 35-162	Repealed in 1953		
35-163 to 35-165	Prize fights	None	
35-166	Public administrator, neglect or violation of duty by	94-7-401	Official misconduct
35-167, 35-168	Public nuisances defined	94-8-107	Public nuisance
35-169	Public officers, resisting in the discharge of their duties	94-7-302	Obstructing a peace officer or public servant
35-170	Public officers assaulting under color of author- ity	94-8-113 94-7-401 94-5-201 94-5-202	Mistreating prisoners Official misconduct Assault Aggravated assault
35-171	Putting extraneous sub- stances in packages sold by weight	94-6-308 94-6-302	Deceptive business practices Theft
35-172, 35-173	Sale of diseased car- casses without inspec- tion	46-247, 46-248	No change in text
35-174	Railroads—animals killed by	72-507	No change in text
35-175	Violating railroad regula- tions	72-219	Penalties
35-176	Repealed in 1969		
35-177	Refusing to aid officers in arrest	94-7-304	Failure to aid peace officer
35-178	Refusing to disperse	94-8-102	Failure to disperse
35-179	Removing skin of animal	69-4518, 69-4519	Dead animals—unlawful dis- position
35-180	Returning to take posses- sion of lands after being removed by legal proceedings	94-7-302 94-7-309	Obstructing a peace officer or public servant Criminal contempt
35-181, 35-182	Riot	94-8-103	Riot
35-183	Rout defined	94-4-103 94-8-103 94-8-104	Attempt Riot Incitement to riot
35-184 to 35-186	Sale or manufacture of Maxim silencers and various explosives for wrongful use	94-8-223 to 94-8-225	No change in text
35-187 to 35-189	Diseased sheep	46-237, 46-238	Diseased animals not to run at large—burial of car- casses

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
35-190 to 35-192	Importing diseased cat- tle	46-237, 46-238 46-245	Diseased animals not to run at large—burial of car- casses Governor may prohibit im- portation of animals from localities where disease exists
35-193	State veterinary surgeon —disobeying order of	46-210	Violation constitutes misde- meanor
35-194	Obstructing veterinary surgeon	94-7-302 46-210	Obstructing a peace officer or public servant Violation constitutes misde- meanor
35-195	Schoolteachers, abuse of	75-6110	Abuse of teachers
35-196	Selling horses at auction —recording sales	66-210	Book for livestock
35-197, 35-198	Selling merchandise at camp meeting	None	
35-199	Repealed in 1969		
35-200	Shepherd — abandon- ment of sheep by	46-3004	No change in text
35-201	Stealing rides upon cars or locomotives	94-6-304 94-6-202	Theft of labor or services or use of property Trespass to vehicles
35-202	Stealing rides on trucks, rods or brake beams	94-6-304 94-6-202	Theft of labor or services or use of property Trespass to vehicles
35-203	Trainmen constituted peace officers	72-672	No change in text
35-204 to 35-207	Forfeiture of vehicles— Theft	46-3005 to 46-3008	No change in text
35-208	Tobacco sales to minors	None	
35-209, 35-210	Lawyers soliciting busi- ness	None	
35-211	Steam boilers— misman- agement	94-8-108	Creating a hazard
35-212	Steam boilers operating without license	69-1517	Operation of boiler or steam engine without license
35-213	Unsafe steam boilers	94-8-108 69-1517	Creating a hazard Operation of boiler or steam engine without license
35-214	False certificate of boiler inspection	94-7-204	Unsworn falsification to au- thorities
35-215	Suicide — aiding or en- couraging	94-5-101 94-5-106 94-2-107	Criminal homicide Aiding or soliciting suicide Accountability
35-216	Sunday, activities forbid- den on	None	
35-217	Tainted food, disposing of	27-703 27-710 94-6-308	Prohibited acts enumerated Adulterated food defined Deceptive business practices
35-218 to 35-221	Telegraph and miscel- laneous offenses	94-8-114	Privacy in communications
35-221.1 to 35-221.4	Party line violations	94-8-109	Failure to yield party line

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
35-221.5, 35-221.6	Abuse, harassment or ex- tortion by telephone	94-8-114 95-404	Privacy in communications Where a person in one coun- ty commits or aids and abets the commission of an offense in another county
35-222 to 35-225	Toy pistols	None	
35-226 to 35-232	Trademarks, forgery, counterfeiting and un- lawful use	94-6-308 94-6-310	Deceptive business practices Forgery
35-233 to 35-236	Registration of trade- marks	85-101 to 85-105 94-6-308	Registration of trademarks Deceptive business practices
35-237, 35-238	Trespassing stock	94-6-203	Criminal trespass to prop- erty
35-239	Fines on trespassing stock	None	
35-240	Range stock exempt	None	
35-241	Unauthorized communi- cation with convict	94-7-307	Transferring illegal articles
35-242 to 35-244	Unlawful assembly—mis- cellaneous offenses	94-8-102 94-8-103	Failure to disperse Riot
35-245	Magistrate refusing or neglecting to disperse rioters	94-7-401	Official misconduct
35-246	Unlawful entries in horse races	62-505	Duties of commission and licensees—license fee
35-247	Name of race horse	62-505	Duties of commission and licensees—license fee
35-248	Vagrants	None	
35-249	Vending or coin-operated machines, operation with counterfeit slugs	94-6-302	Theft
35-250	Manufacturing tokens, etc., for unlawful use	94-6-310	Forgery
35-251, 35-252	Railroad safety violations	None	
35-253	Wearing certain uniforms prohibited	94-7-210	Impersonating a public serv- ant
35-254	Wearing mask or dis- guise	None	
35-255	Willfully poisoning food, medicine or water	94-5-202 94-6-102 94-4-103	Aggravated assault Criminal mischief Attempt
35-256, 35-257	Workmen — false repre- sentation to procure	41-118	Deceived employees—action for damages
35-258, 35-259	Endurance races of horses	94-8-106(1)(d)	Cruelty to animals
35-260	State tax stamp—failure to affix or cancel — counterfeiting	Repealed	
35-261	Importing or selling ma- chinery with altered, defaced or removed serial number	94-6-308(e) 94-6-311(b)	Deceptive business practices Obscuring the identity of a machine

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
35-262	Altering, defacing or removing serial number of farm machinery	94-6-311	Obscuring the identity of a machine
35-263	Penalty	94-6-311	Obscuring the identity of a machine
35-264	Furnishing articles to and receiving from prisoners in state prison	94-7-307	Transferring illegal articles
35-265	Abandoning or permitting abandoned icebox in dangerous condition	94-8-108(1)(a)	Creating a hazard
35-266 to 35-268	Repealed in 1959		
35-269	Hunting in careless or reckless manner—failure to assist person injured	94-8-108(1)(e)	Creating a hazard
35-270, 35-271	Delivery of grain containing toxic chemicals to public warehouses	3-234, 3-235 94-6-308 27-703 27-710 27-713	No change in text Deceptive business practices Prohibited acts enumerated Adulterated food defined Additives to conform to regulations
35-271.1 to 35-271.3	Coloration of grain treated with injurious or toxic substances	3-236 to 3-238 94-6-308 27-703 27-710 27-713 27-720 27-705	No change in text Deceptive business practices Prohibited acts enumerated Adulterated food defined Additives to conform to regulations False advertising — representation of curative properties Criminal penalties for prohibited acts—reliance on guaranty or undertaking
35-272	Unlawful operation, use, interference, or tampering of aircraft — penalty	94-8-108 94-6-305	Creating a hazard Unauthorized use of motor vehicles
35-273	Switchblade knives—possession, selling, using, giving, or offering for sale	94-8-226	No change in text
35-274, 35-275	Recording of conversation	94-8-114(1)(c)	Privacy in communications
3601, 3602	Obscene literature	94-8-110	Obscenity
3603	Indecent exposure, exhibitions and pictures	94-8-110 94-5-504 94-8-101	Obscenity Indecent exposure Disorderly conduct
3604	Seizures of indecent articles authorized	95-702 95-705	Scope of search without warrant Scope of search with warrant

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
3605	Indecent character sum- marily determined	95-712	Return to court of things seized under search war- rant
		95-713	Custody and disposition of things seized under search warrant
		95-714	Custody and disposition of things seized without search warrant
3606	Destruction of indecent articles	None	
3607	Keeping or residing in a house of ill fame	94-5-603	Promoting prostitution
3608	Keeping disorderly houses	94-5-603 94-8-107	Promoting prostitution Public nuisance
3609	Advertising to produce miscarriage	None	
3610	Enticing to place of gam- bling or prostitution	94-5-603 94-4-101	Promoting prostitution Solicitation
3611 to 3615	Advertising cures	None	
3616 to 3619	Repealed in 1973		
3620 to 3623	Contraceptive drugs or devices	94-8-110.2	No change in text
3624 to 3626	Public display of offen- sive sexual material	94-8-110.1	No change in text
3701	Pawnbrokers — doing business without a li- cense	66-1601 84-3201	Interest pawnbrokers may receive Billiard tables—pawnbroker —theaters, etc.
		95-2206.3	When no penalty is specified
3702	Failure to keep register	66-1606 95-2206.3 94-5-609	Must keep register When no penalty is specified Unlawful transactions with minors
3703	Rate of interest	66-1601 95-2206.3	Interest pawnbrokers may receive When no penalty is specified
3704	Failure to produce regis- ter for inspection	66-1606 95-2206.3	Must keep register When no penalty is specified
3801	Perjury defined	94-7-202	Perjury
3802	Oath defined	94-7-202	Perjury
3803	Oath of office	None	
3804, 3805	Witnesses before legisla- tive assembly	94-7-202 94-7-203	Perjury False swearing
3806 to 3808	Perjury	94-7-202	Perjury
3809	Making depositions, etc., when deemed complete	94-7-202 94-7-101	Perjury Definition of terms
3810	Statement of that which one does not know to be true	None	
3811	Punishment of perjury	94-7-202	Perjury
3812	Subornation of perjury	94-7-202 94-4-101	Perjury Solicitation
3813	Procuring the execution of innocent person	94-5-101	Criminal homicide

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
3901, 3902	Acting in a public capacity without being qualified	None	
3903	Giving or offering bribes to executive officers	94-7-102	Bribery in official and political matters
3904	Asking or receiving bribes	94-7-102	Bribery in official and political matters
3905	Resisting officers	94-4-101 94-7-302	Solicitation Obstructing a peace officer or public servant
3906	Extortion	94-7-303 94-6-302 94-7-401 94-7-102	Obstructing justice Theft Official misconduct Bribery in official and political matters
3907	Officers illegally interested in contracts	94-7-401 59-501 59-502 59-503	Official misconduct Certain officers not to be interested in contracts Interest in certain sales Contracts in violation, voidable
3908	Fraudulent bills or claims presented for allowance or payment	94-7-401 94-6-302 94-6-310	Official misconduct Theft Forgery
3909	Buying appointments to office	94-7-102	Bribery in official and political matters
3910	Taking rewards for deputation	94-7-102 94-7-105	Bribery in official and political matters Gifts to public servants by persons subject to their jurisdiction
3911	Exercising functions of office wrongfully	94-7-210	Impersonating a public officer
3912	Refusal to surrender books, etc., to successor	59-531 94-7-401 94-7-209	Proceedings to compel delivery of Official misconduct Tampering with public records or information
3913	Scope of application of chapter	None	
3914	False certificates by public officers	94-7-209 94-7-203	Tampering with public records or information False swearing
3915	Officer refusing to receive or arrest parties charged with crime	94-7-401 16-2702 95-603	Official misconduct Duties of sheriff Issuance and service of arrest warrant upon complaint
3916	Delaying to take person arrested before a magistrate	94-7-401 16-2702 95-901	Official misconduct Duties of sheriff Duty of person who has made an arrest
3917	Inhumanity to prisoners	94-8-113	Mistreating prisoners
3918, 3919	Confessions obtained by duress or inhuman practices	94-8-113	Mistreating prisoners
3920	Importing persons to discharge duties of peace officers prohibited	94-7-504	Bringing armed men into the state

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
4001, 4002	Prohibited pool games	None	
4003	Closing hour for pool halls, billiard halls and bowling alleys	None	
4004	Permitting minors in pool or billiard hall	10-617	Improper and negligent training of children
4005	Penalty for violation of act	None	
4101	Rape defined	94-5-503	Sexual intercourse without consent
4102	When physical ability must be proved	94-5-503	Sexual intercourse without consent
4103	Penetration sufficient	94-2-101(56), 94-5-501	Definition of "sexual inter- course"
4104	Punishment for rape	94-5-502	Sexual assault
4105	Abduction of women	94-5-302 94-5-203 94-5-603	Kidnaping Intimidation Promoting prostitution
4106	Lewd and lascivious acts upon children	94-5-502 94-5-503	Sexual assault Sexual intercourse without consent
		94-5-505	Deviate sexual conduct
4107	Open and notorious adul- tery and fornication	None	
4108	Seduction	None	
4109 to 4117	Other sexual crimes	94-5-603	Promoting prostitution
4118	Crime against nature	94-5-505	Deviate sexual conduct
4119	Penetration sufficient	94-2-101(56)	Definition of "sexual inter- course"
4120	Child under sixteen can- not be accomplice	94-5-505 94-5-501 94-2-107(3)(a)	Deviate sexual conduct Definition of terms Accountability of victim
4201	Rescuing prisoners	94-5-305	Custodial interference
4202	Retaking goods from cus- tody of officer	94-6-302	Theft
4203	Escapes from state prison	94-7-306	Escape
4204	Attempt to escape from state prison	94-7-306 94-4-103	Escape Attempt
4205	Escapes from other than state prisons	94-7-306	Escape
4206	Officers suffering convicts to escape	94-7-306	Escape
4207	Assisting prisoners to es- cape	94-7-306	Escape
4208	Carrying into prison things useful to aid in an escape	94-7-306 94-7-307	Escape Transferring illegal articles
4209	Expense of trial for es- cape	80-1912	Minor changes in text
4301 to 4303	Robbery	94-5-401	Robbery
4401 to 4406	Sedition—criminal syndi- calism—sabotage	94-7-503 94-6-102	Criminal syndicalism Criminal mischief
4407, 4408	Assembling to advocate forbidden acts	94-8-103 94-7-503	Riot Criminal syndicalism
4409, 4410	Red flag or emblem, dis- play	None	
4411 to 4427	Subversive organiza- tions, registration	None	
4501, 4502	Treason and misprision of treason	None	

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
4601, 4602	Unlawful removal of dead body	Title 69, ch. 23	Anatomical Gift Act
4603	Duty of burial	94-6-102 69-5106 9-601	Criminal mischief Unauthorized post-mortem examinations Persons authorized to control disposition
4604	Omitting to bury	None	
4605	Custody of body	9-601	Persons authorized to control disposition
4606	Arresting or attaching a dead body	None	
4607	Defacing tombs or monuments	94-6-102	Criminal mischief
4701 to 4703	Punishments — attempts and other general provisions	95-1711	Effect of former prosecution
4704	Contempts, how punishable	94-7-309 94-1-104(2)	Criminal contempt Contempt powers preserved
4705	Mitigation of punishment in certain areas	None	
4706	Aiding in misdemeanor	94-2-107 94-2-108 94-4-101 94-4-102 94-4-103	When accountability exists Separate convictions of persons accountable Solicitation Conspiracy Attempt
4707	Sending letters, when deemed complete	None	
4708	Removal from office for neglect of official duty	94-7-401	Official misconduct
4709	Omission to perform duty, when punishable	94-2-102 94-2-105 94-2-106	Voluntary acts Causal relationships between conduct and result Accountability for conduct of another
4710, 4711	Attempts to commit crime punishable	94-4-103	Attempt
4712	Commission of offense while unsuccessfully attempting another	94-2-105(2)	Result different than contemplated
4713 to 4715	Repeated offenses	95-1507	Persistent felony offenders
4716, 4717	Repealed in 1967		
4718	Imprisonment for life	None	
4719	Fine added to imprisonment	None	
4720	Civil rights of convict suspended	95-2227	Effect of conviction
4721	Civil death	None	
4722	Conveyances by convict	95-2227	Effect of conviction
4723	Convict as witness	95-2227	Effect of conviction
4724	Person of convict protected	94-8-113	Mistreating prisoners
4725	Forfeitures	1972 Const., Art. II, Sec. 30 95-2227	Forfeiture of property prohibited Effect of conviction
4801	No person punishable but on legal conviction	1972 Const., Art. II, Sec. 17	Due process
4802	Public offenses — how prosecuted	1972 Const., Art. II, Sec. 20	Initiation of prosecutions
4803	Repealed in 1967		

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
4804	Parties to a criminal action	95-1503	Parties to a criminal action
4805	Repealed in 1967		
4806	Rights of a defendant in a criminal action	1972 Const., Art. II, Sec. 24	Rights of the accused
4807	Repealed in 1969		
4808	No person to be witness against himself or to be unnecessarily restrained	1972 Const., Art. II, Secs. 21, 22, 23	Bail and detention
4809	No person to be convicted but upon verdict or judgment	1972 Const., Art. II, Sec. 26	Privilege against self-incrimination Trial by jury
4901 to 4917	Repealed in 1967	95-1915	Verdict
5001 to 5004	Lawful resistance	94-3-102	Use of force in defense of person
5005	Persons acting in aid of officers justified	95-609(c)	Assisting a peace officer
5101 to 5116	Security to keep the peace	None	
5201, 5202	Police in cities and towns—organization and attendance at public meetings	None	
5301	Power of sheriff in overcoming resistance	95-609	Assisting a peace officer
5302	Officer to certify to court the name of resisters, etc.	94-7-302	Obstructing officer
5303	Ordering out militia to aid in executing process	77-107	Governor may order out organized militia
5304	Magistrates and officers to command rioters to disperse	94-8-102	Failure to disperse
5305	Arrest of rioters if they do not disperse	94-8-102 94-8-103 95-609	Failure to disperse Riot Assisting a peace officer
5306	Officers who may order out the militia	None	
5307	Commanding officer and troops to obey the order	77-109	Penalty for failure to obey call
5308 to 5310	Suppression of riots	77-121	Officers to be commissioned by governor
5311	Conduct of troops	77-121	Officers to be commissioned by the governor
5312, 5313	Governor may declare county in state of insurrection	95-602 77-107	Method of arrest Governor may order out organized militia
5314	Liability of officers for neglect of duties concerning unlawful or riotous assembly	None	
5401, 5402	Power of impeachment	95-2801, 95-2802	Amended by separate 1973 acts, no other change in text
5403 to 5417	Impeachment proceedings	95-2803 to 95-2817	No change in text

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
5418	Repealed by separate 1973 act		
5419	Impeachment no bar to indictment	95-2819	No change in text
5501 to 5516	Removal of officers other- wise than by impeach- ment	94-7-401	Official misconduct
5601 to 5619	Repealed in 1967		
5701 to 5706	Time of commencing criminal actions	94-1-106 94-1-107	General time limitations Limitations
5801 to 6406	Repealed in 1967		
6407	Repealed in 1961		
6407.1 to 6413	Repealed in 1967		
6414	Presumption of law, etc. need not be stated	95-1503	Form of charge
6415	Judgments, etc., how pleaded	95-1506	Pleading judgment
6416	Private statutes, how pleaded	95-1503	Form of charge
6417	Pleading for libel	95-1503	Form of charge
6418	Pleading for forgery, where instrument has been destroyed or with- held by defendant	95-1503	Form of charge
6419	Pleading for perjury or subornation of perjury	95-1503	Form of charge
6420	Pleading for larceny or embezzlement	95-1503	Form of charge
6421	Pleading for selling, ex- hibiting, etc., lewd and obscene books	None	
6422	Repealed in 1967		
6423	Distinction between ac- cessory before the fact and principal abrogated	94-2-107	When accountability exists
6424	Indictment against ac- cessory	94-2-107 95-404	When accountability exists Where a person in one county commits or aids and abets the commission of an offense in another county
6425	Accessory may be indited and tried, though principal has not been	94-2-108	Separate conviction of per- sons accountable
6426 to 6428	Repealed in 1967		
6429	Allegation as to partner- ship property	95-1503 94-6-306	Form of charge Offender's interest in the property
6430 to 6805	Repealed in 1967		
6806 to 6808	Repealed in 1969		
6808.1 to 6808.5	Double jeopardy	95-1711	Effect of former prosecu- tion
6809 to 7202	Repealed in 1967		
7203	Defendant presumed in- nocent — reasonable doubt	95-2901	No change in text
7204	Reasonable doubt as to degree convicts only of lowest	95-2902	No change in text
7205	Repealed in 1967		

CROSS REFERENCE TABLE

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
7206, 7207	Discharging defendant that he may be a witness	95-1504(d), (e)	No change in text
7208	Effect of such discharge	95-1711	Effect of former prosecution and multiple prosecutions
7209	Rules of evidence in civil actions applicable to criminal cases	95-3001	No change in text
7210	Evidence on trial for treason	95-3002	No change in text
7211	Evidence on trial for conspiracy	94-4-102	Evidence for conspiracy
7212	When burden of proof shifts in trial for murder	95-3004(b)	Burden in a homicide trial
7213	All witnesses need not be called	None	
7214	Evidence on trial for bigamy	None	
7215	Evidence on trial for forging bank bills	None	
7216	Evidence on trial for abortion and enticing females for prostitution	None	
7217	Proof of corporation by reputation	None	
7218	Evidence on trial for selling, etc., lottery tickets	None	
7219	Evidence of false pretenses	None	
7220	Conviction on testimony of accomplice	95-3012	Testimony of persons legally accountable
7221 to 7233	Repealed in 1967		
7234	Repealed in 1969		
7235 to 7239	Repealed in 1967		
7240	Evidence in trials for larceny	None	
7301 to 7306	Repealed in 1967		
7307	When discharged without verdict, cause to be tried again	95-1711	Effect of former prosecution
7308 to 7822	Repealed in 1967		
7823	Repealed in 1955		
7824	Repealed in 1967		
7825 to 7830	Repealed in 1955		
7831 to 7841	Repealed in 1967		
7901, 7902	Uniform Act for Out-of-State Parolee Supervision	95-3201, 95-3202	No change in text
8001 to 8507	Repealed in 1967		
8508 to 8510	Guaranteed arrest bond certificates	None	
8601 to 8718	Repealed in 1967		
8801	Who are competent witnesses	95-3010	No change in text
8802	Competency of husband and wife as witnesses	95-3011	No change in text
8803	Defendant as witness	1972 Const., Art. II, Sec. 25	Privilege against self-incrimination

CRIMINAL CODE OF 1973

R.C.M., 1947 Title 94 Old Section	Subject Matter	Montana Criminal Code of 1973	Subject Matter
8804	Testimony of parties to offense	95-1807	Defendant as witness
8901 to 8909	Repealed in 1967		
9001	Definition of terms	95-1808	Definition of terms
9002 to 9004	Witnesses from without state	95-1809 to 95-1811	No change in text
9005 to 9007	Interpretation, short title and repeal	None	
9201 to 9214	Examination of witnesses on commission	95-1802	Depositions
9301 to 9306	Repealed in 1967		
9307	Expense of sending etc., defendant to asylum	95-506(d)	Expense of sending defendant to hospital
9401 to 9707	Repealed in 1967		
9801 to 9820	Repealed in 1955		
9821, 9822	Probation, parole and clemency	95-3203, 95-3204	No change in text
9823	Definition of terms	95-3205	Amended by separate 1973 act, no other change in text
9824 to 9837	Board of pardons and its procedures	95-3206 et seq.	Miscellaneous amendments and repeals
9838	Return of parole violator	95-3308	Amended
9839, 9840	Parolees' terms of service	95-3221, 95-3222	No change in text
9841, 9842	Executive clemency applications	95-3223, 95-3224	Amended by separate 1973 act, no other change in text
9843 to 9845	Hearings on executive clemency	95-3225 to 95-3227	No change in text
9846	Notice of hearings	95-3228	Minor changes in text
9847 to 9851	Decisions on executive clemency	95-3229 to 95-3233	No change in text
9901 to 9908	Bastardy proceedings	93-2901-1 to 93-2901-11	Support of children born out of wedlock
100-1 to 301-21	Repealed in 1967		
401-1 to 401-3	Reward for apprehension of convicts and felons	None	
501-1 to 501-32	Uniform Criminal Extradition Act	95-3101 to 95-3130	Uniform Criminal Extradition Act
601-1 to 601-3	Repealed in 1967		
701-1	Bringing prisoner into court	95-1812	No change in text
801-1, 801-2	Fines and forfeitures, disposition	95-2228, 95-2229	Fines and forfeitures, disposition
901-1 to 901-18	Repealed in 1961		
1001-1 to 1001-11	Criminal law study commission	None	
1101-1 to 1101-6	Interstate Agreement on Detainers	95-3131 to 95-3136	No change in text

INDEX

References are to section numbers

A

Abatement of public nuisance, action for, 94-8-107(5)

Abortion

Montana Abortion Control Act, 94-5-613 to 94-5-624

providing or using drugs or instruments to procure miscarriage of pregnant woman, punishment, 94-5-611

soliciting and taking of drugs or submitting to operation to procure miscarriage by pregnant woman, punishment, 94-5-612

Absolute liability, 94-2-104

Accessories, 94-2-106 to 94-2-108—See Accountability

Accountability

causing another to perform, legal accountability for, 94-2-107(1)

corporation, person legally accountable for conduct in name or in behalf of, punishment as individual, 94-2-113

legal accountability of person for conduct of himself or of another, 94-2-106

separate conviction of person legally accountable for conduct of another, 94-2-108

solicitation, elements of offense, punishment, 94-4-101

soliciting, aiding or abetting another in planning or commission of offense, legal accountability for, exceptions, 94-2-107(3)

"solicit" or "solicitation" defined, 94-2-101(57)

statutory basis for legal accountability for conduct of another, 94-2-107(2)

"Acts" defined, 94-2-101(1)

Administrative proceedings

bribery in official and political matters, elements, punishment, 94-7-102

definition, 94-2-101(3)

falsification in official matters, 94-7-201 to 94-7-210—See Falsification in official matters

gifts to public servants by persons subject to their jurisdiction, elements, punishment, 94-7-105

official misconduct, 94-7-401—See Official misconduct of public servant

past official behavior, acceptance of compensation for, elements, punishment, 94-7-104

threats and other improper influence in official matters, elements, punishment, 94-7-103

Adulterated commodities, sale as deceptive business practice, definition, punishment, 94-6-308

Advertising

contraceptive drugs or devices, advertising prohibited, 94-8-110.3

deceptive business practices, elements, definitions, punishment, 94-6-308

Aggravated assault, elements, punishment, 94-5-202

Aggravated burglary, elements, punishment, 94-6-204(2), (3)

Aggravated kidnaping, grounds for imposing death sentence, 94-5-304

Aggravated promotion of prostitution, elements, punishment, 94-5-603(2), (3)

Aiding and abetting, 94-2-106 to 94-2-108—See Accountability

Airplanes—See Vehicles

tampering with aircraft as creating a hazard, punishment, 94-8-108

unauthorized use, elements, punishment, 94-6-305

Alcohol—See Intoxicating substances; Intoxication

"intoxicating substance" defined, 94-2-101(25)

Animals

brands, elements of offense of illegal branding or altering or obscuring brand, punishment, 94-6-312

cruelty to animals, elements, punishment, 94-8-106

injuring or killing commonly domesticated animal as criminal mischief, punishment, 94-6-102

INDEX

References are to section numbers

"Another" defined, 94-2-101(2)

Application of Criminal Code

- civil remedies not affected, 94-1-104(1)
- contempt, power of court to punish not affected, 94-1-104(2)
- court order, civil judgment or decree, enforcement not affected, 94-1-104(2)
- description of conduct as offense in code or other statute required to constitute offense, 94-1-104(2)
- offenses committed after effective date, application to, 94-1-103(1)
- offenses defined outside code, 94-1-103(2), (3)

Arrests

- escape, elements, punishment, 94-7-306
 - justifiable use of force to prevent escape, 94-3-106(1)
- failure to aid peace officer, elements, punishment, 94-7-304
- "frisk" defined, 94-2-101(16)
- harboring or aiding offender to avoid apprehension as obstructing justice, punishment, 94-7-303
- "official detention" defined, 94-7-306(1)
- resisting arrest, elements, punishment, 94-7-301
 - force to resist arrest unauthorized even if arrest unlawful, 94-3-108
 - unlawful arrest no defense, 94-7-301(2)
- "stop" defined, 94-2-101(61)
- unauthorized communication with persons subject to official detention, elements, punishment, 94-7-307(2)

Arson, elements of offense, punishment, 94-6-104

negligent arson, elements, punishment, 94-6-103

Assault, elements of offense, punishment, 94-5-201

aggravated assault, elements, punishment, 94-5-202

intimidation, elements, punishment, 94-5-203

prisoners, elements of offense of mistreating prisoners, punishment, 94-8-113

sexual assault, elements, punishment, 94-5-502

Athletic contests, elements of bribery in contests, punishment, 94-8-112

Attempt, elements of offense, 94-4-103(1)

abandonment of criminal effort as defense, 94-4-103(4)

completion of offense no bar to conviction for attempt, 94-4-103(5)

impossibility of commission of attempted offense no defense, 94-4-103(2)

punishment, 94-4-103(3)

Automobiles—See Vehicles

unauthorized use of motor vehicles, elements, punishment, 94-6-305

B

Bad checks, elements of offense, evidence, punishment, 94-6-309

Bail-jumping, elements, punishment, 94-7-308

"Benefit" defined, 94-2-101(4)

Bestiality, elements of deviate sexual conduct, 94-5-505

Bigamy, elements of offense, defenses, punishment, 94-5-604

marrying a bigamist, elements of offense, punishment, 94-5-605

Boats—See Vehicles

unauthorized use, elements, punishment, 94-6-305

"Bodily injury" defined, 94-2-101(5)

Bombs—See Explosives

communicating threat or false report of pending explosion as intimidation, 94-5-203(2)

Brands, elements of offense of illegal branding or altering or obscuring brand, punishment, 94-6-312

Bribery

definitions in 94-2-101 apply, 94-7-101

elements of offense of bribery in official and political matters, punishment, 94-7-102

gambling, acceptance of bribes or payments to protect offenders a felony, 94-8-417

INDEX

References are to section numbers

Bribery (Continued)

- gifts to public servants by persons subject to their jurisdiction, elements, punishment, 94-7-105
- official misconduct, 94-7-401—See Official misconduct of public servant
- past official behavior, acceptance of compensation for, elements, punishment, 94-7-104
- sporting events, elements of bribery in contests, punishment, 94-8-112
- threats and other improper influence in official and political matters, elements, punishment, 94-7-103

Burglary, elements of offense, punishment, 94-6-204(1), (3)

- aggravated burglary, elements, punishment, 94-6-204(2), (3)
- "enter or remain unlawfully" defined, 94-6-201
- "occupied structure" defined, 94-2-101(35)
- possession of burglary tools, elements, punishment, 94-6-205

Business practices—See also Corporations

- chain distributor schemes, definitions, elements, punishment, 94-6-308.1
- deceptive practices, elements, definitions, punishment, 94-6-308
- gifts to public servants, elements of offense, punishment, 94-7-105

C

Capital punishment

- aggravated kidnaping, grounds for imposing death sentence, 94-5-304
- deliberate homicide, circumstances requiring death sentence, 94-5-105
- justification of acts of public servant in execution of death sentence, 94-3-109

Chain distributor schemes, definitions, elements, punishment, 94-6-308.1

Checks

- forgery, elements, definitions, punishment, 94-6-310
- issuing a bad check, elements, evidence, punishment, 94-6-309

Children—See Family, offenses involving; Minors

Civil actions, remedies and enforcement of orders, judgments or decrees not affected by Criminal Code, 94-1-104

Classification of offenses, purpose and basis for designation of offense as felony or misdemeanor, 94-1-105(1)

- offenses defined by statutes other than Criminal Code to be classified, 94-1-105(2)

"Cohabit" defined, 94-2-101(6)

"Common scheme" defined, 94-2-101(7)

Communications

- criminal defamation, 94-8-111—See Criminal defamation
- damage to property causing interruption or impairment of public communication services as criminal mischief, punishment, 94-6-102
- failure to yield party line, 94-8-109—See Telephone and telegraph, failure to yield party line
- privacy in communications, elements of offense, punishment, 94-8-114
- threatening, profane or abusive language as disorderly conduct, punishment, 94-8-101
- unauthorized communication with persons subject to official detention, elements, punishment, 94-7-307(2)
- wiretapping, acts constituting violating privacy in communications, punishment, 94-8-114

Competency, 94-2-109—See Responsibility for criminal conduct

Compounding a felony, elements, punishment, 94-7-305

Compulsion to commit offense under threat or menace of death or serious bodily harm, 94-3-110

Concealed weapons

- carrying in cities or towns prohibited, punishment, 94-8-210
- carrying outside cities or towns prohibited, punishment, 94-8-211
- definition of "concealed weapons," 94-8-215
- exemptions from prohibition against carrying concealed weapons, 94-8-212
- jurisdiction of district court over prosecutions, 94-8-217

INDEX

References are to section numbers

Concealed weapons (Continued)

- permit to carry pistol or revolver, requirements and procedure for issuance, 94-8-214
- prisoner's possession of weapon prohibited, punishment, 94-8-213
- "unincorporated town" defined, 94-8-216

Conduct

- accountability for conduct of another, 94-2-106 to 94-2-108—See Accountability
- causal relationship between conduct and result, 94-2-105
- definition of "conduct," 94-2-101(8)
- description of conduct as offense required in Criminal Code or other statute, 94-1-104(2)
- requirement of criminal act and particular mental state, 94-2-103

Confession, mistreating prisoner to obtain, punishment, 94-8-113

Confidence games

- deceptive practices, elements, punishment, 94-6-307
- game known as confidence game or bunco prohibited, punishment, 94-8-406

Consent

- defense of consent, when consent ineffective, 94-2-111
- "without consent" defined, 94-5-501(2)

Conspiracy, elements of offense, 94-4-102(1)

- defenses unavailable, enumeration of, 94-4-102(2)
- punishment, 94-4-102(3)

Construction of Criminal Code, 94-1-102(2)

Contempt

- bail-jumping as offense, court's power to punish not affected, 94-7-308(2)
- court's power to punish for contempt not affected by Criminal Code, 94-1-104(2)
- criminal contempt, elements, punishment, 94-7-309

Contraceptive drugs or devices

- advertising prohibited, 94-8-110.2(2)
- physicians and pharmacists exempt, 94-8-110.2(1)
- prohibited methods of sale or distribution, 94-8-110.2(1)
- punishment, 94-8-110.2(4)
- seizure of illegal stock, 94-8-110.2(3)

"Conviction" defined, 94-2-101(9)

Corporations

- accountability of person for conduct in name or in behalf of corporation, punishment as individual, 94-2-113
- "agent" defined, 94-2-112(3)
- chain distributor schemes, definitions, elements, punishment, 94-6-308.1
- deceptive business practices, elements, definitions, punishment, 94-6-308
- defense of due diligence to prevent commission of offense, 94-2-112(2)
- gifts to public servants, elements of offense, punishment, 94-7-105
- "high managerial agent" defined, 94-2-112(3)
- offenses subjecting corporation to prosecution, 94-2-112(1)

"Correctional institution" defined, 94-2-101(10)—See Prisons and prisoners

Corrupt influence, 94-7-101 to 94-7-105—See Bribery

Courts

- bribery, elements, punishment, 94-7-102—See Bribery
- civil remedies and enforcement of orders, judgments or decrees not affected by Criminal Code, 94-1-104
- contempt
 - court's power to punish not affected by Criminal Code, 94-1-104(2)
 - bail-jumping as offense, court's power to punish for contempt not affected, 94-7-308(2)
 - criminal contempt, elements, punishment, 94-7-309
- falsification in official matters, 94-7-201 to 94-7-210—See Falsification in official matters
- gifts to public servants by persons subject to their jurisdiction, elements, punishment, 94-7-105
- "official proceeding" defined, 94-2-101(39)

INDEX

References are to section numbers

Courts (Continued)

- past official behavior, acceptance of compensation for, elements, punishment, 94-7-104
- perjury, 94-7-202—See Perjury
- physical evidence, tampering with or fabricating, elements, punishment, 94-7-208
- threats and other improper influence in official matters, elements, punishment, 94-7-103
- witnesses
 - definition of "witness," 94-2-101(67)
 - tampering with witnesses, elements, punishment, 94-7-207
- Creating a hazard, elements, punishment, 94-8-108
 - creating hazardous condition as disorderly conduct, 94-8-101
- Credit cards, deceptive practices, elements, punishment, 94-6-307
- Creditors, elements of offense of defrauding secured creditors, "security interest" defined, punishment, 94-6-313
- Criminal contempt, elements, punishment, 94-7-309
- Criminal defamation, elements of offense, 94-8-111(2)
 - "defamatory matter" defined, 94-2-101(12), 94-8-111(1)
 - justification for communication of defamatory matter, 94-8-111(3)
 - proof of communication required for conviction, 94-8-111(4)
 - punishment, 94-8-111(2)
- Criminal homicide, definition, degrees, 94-5-101—See Homicide
- Criminal mischief, elements of offense, punishment, 94-6-102
 - definitions in 94-2-101 apply, 94-6-101
- Criminal syndicalism, elements of offense, 94-7-503(2)
 - definition of "criminal syndicalism," 94-7-503(1)
 - owner of premises permitting assemblage for criminal syndicalism, punishment, 94-7-503(4)
 - punishment, 94-7-503(3)
- Criminal trespass
 - "enter or remain unlawfully" defined, 94-6-201
 - property, criminal trespass to, elements, punishment, 94-6-203
 - vehicles, criminal trespass to, elements, punishment, 94-6-202
- Cruelty to animals, elements, punishment, 94-8-106
- Culpability, 94-2-103—See Mental state
- Custodial interference, elements, punishment, 94-5-305

D

- Death sentence—See Capital punishment
- Deceptive practices—See also False pretense and fraud
 - business practices, elements of offense of deceptive business practices, definitions, punishment, 94-6-308
 - "deception" defined, 94-2-101(11)
 - elements of offense of deceptive practices, punishment, 94-6-307
- Defamation, 94-8-111—See Criminal defamation
- Defenses
 - attempt
 - abandonment of criminal effort, 94-4-103(4)
 - impossibility of commission of offense no defense, 94-4-103(2)
 - bigamy, 94-5-604(1)
 - compulsion to commit offense under threat or menace of death or serious bodily harm, 94-3-110
 - consent, 94-2-111
 - corporation's defense of due diligence to prevent commission of offense, 94-2-112(2)
 - entrapment, 94-3-111
 - intoxication, requirements for proof of lack of criminal responsibility, 94-2-109
 - justifiable use of force, 94-3-101 to 94-3-112—See Justifiable use of force
 - mental state, defense based on lack of, 94-2-103(6)

INDEX

References are to section numbers

Defenses (Continued)

- perjury or other falsification in official matters, irregularity of oath or affirmation or incompetency of declarant no defense, 94-7-202(4)
- reasonable belief that conduct not an offense, 94-2-103(4)
 - conviction of included offense, 94-2-103(5)
- sexual crimes, offender's belief that victim above age sixteen, 94-5-506(1)
- theft of property, interest of offender no defense, 94-6-306

Definitions, 94-2-101

"Deprive" defined, 94-2-101(13)

Desecration of flags, definition, elements, punishment, exceptions, 94-7-502

Disorderly conduct, prohibited acts enumerated, 94-8-101(1)

- failure of disorderly persons to disperse, punishment, 94-8-102
- punishment for disorderly conduct, 94-8-101(2)

Domestic relations—See Family, offenses involving

Drugs—See Intoxicating substances; Intoxication

- contraceptive drugs or devices, prohibited methods of distribution, 94-8-110.2—See Contraceptive drugs or devices

"intoxicating substance" defined, 94-2-101(25)

E

Elections

- bribery, elements, punishment, 94-7-102
- threats and other improper influence, elements, punishment, 94-7-103

Electronic surveillance, acts constituting violating privacy in communications, punishment, 94-8-114

Entrapment, 94-3-111

Escape, elements of offense, punishment, 94-7-306

- aiding offender to escape as obstructing justice, punishment, 94-7-303
- force to prevent escape, justifiable use of, 94-3-106
- "official detention" defined, 94-7-306(1)

Evidence

- bad check, effect of offender's failure to make good within five days after notice of nonpayment, 94-6-309(2)
- house of prostitution, admissible evidence, 94-5-603(4)
- obscenity prosecution, admissible evidence, 94-8-110(3)
- tampering with or fabricating physical evidence, elements, punishment, 94-7-208

Explosives

- communicating threat or false report of pending explosion as intimidation, 94-5-203(2)
 - false report of fire, explosion or other catastrophe as disorderly conduct, 94-8-101
- manufacture, sale or possession of bombs or explosives for wrongful use, punishment, 94-8-223
 - possession presumptive evidence of wrongful use, 94-8-225
 - principals, punishment, 94-8-224
- minor, selling or giving explosives to, punishment, 94-5-609
- possession of explosives, elements, punishment, 94-6-105

Extortion

- intimidation, elements of offense, punishment, 94-5-203
- telephone, use for extortion, punishment, 94-8-114

F

False alarms

- bomb threat, communicating false report as intimidation, 94-5-203(2)
- false report of fire, explosion, or other catastrophe as disorderly conduct, punishment, 94-8-101
- fire or other emergency, elements, punishment, 94-7-205
- law enforcement authorities, false reports to, 94-7-206

False imprisonment, elements of unlawful restraint, punishment, 94-5-301

INDEX

References are to section numbers

False pretense and fraud

- bad checks, elements of offense, evidence, punishment, 94-6-309
- brands, elements of offense of illegal branding or altering or obscuring brand, punishment, 94-6-312
- chain distributor schemes, definitions, elements, punishment, 94-6-308.1
- creditors, elements of offense of defrauding secured creditors, "security interest" defined, punishment, 94-6-313
- "deception" defined, 94-2-101(11)
- deceptive business practices, elements, definitions, punishment, 94-6-308
- deceptive practices, elements, punishment, 94-6-307
- forgery, elements, definition, punishment, 94-6-310
- impersonating a public servant, elements, punishment, 94-7-210
- machine identification number or mark, elements of offense of obscuring the identity of a machine, punishment, 94-6-311
- telephone emergency call, false pretext to place, punishment, 94-8-109(3)

Falsification in official matters

- corroboration of proof of falsity, 94-7-202(7)
- definitions in 94-2-101 apply, 94-7-201
- evidence, tampering with or fabricating, elements, punishment, 94-7-208
- false alarms—See False alarms
- false swearing, elements of offense, 94-7-203(1)
 - corroboration of proof of falsity, 94-7-202(7)
 - inconsistent statements, proof of falsity of one or the other not required, 94-7-202(6)
 - irregularity of oath or affirmation or incompetency of declarant no defense, 94-7-202(4)
 - punishment, 94-7-203(3)
 - retraction of falsification, effect of, 94-7-202(5)
- impersonating a public servant, elements, punishment, 94-7-210
- inconsistent statements, proof of falsity of one or the other not required, 94-7-202(6)
- irregularity of oath or affirmation or incompetency of declarant no defense, 94-7-202(4)
- law enforcement authorities, false reports to, elements, punishment, 94-7-206
- perjury, 94-7-202
- public records or information, tampering with, elements, punishment, 94-7-209
- retraction of falsification, effect of, 94-7-202(5)
- unsworn falsification, elements, punishment, 94-7-204
- witnesses and informants, tampering with, elements, punishment, 94-7-207

Family, offenses involving

- abortion
 - providing or using drugs or instruments to procure miscarriage of pregnant woman, punishment, 94-5-611
 - soliciting and taking of drugs or submitting to operation to procure miscarriage, punishment, 94-5-612
- bigamy, elements of offense, defenses, punishment, 94-5-604
 - marrying a bigamist, elements, punishment, 94-5-605
- "cohabit" defined, 94-2-101(6)
- custodial interference, elements, punishment, 94-5-305
- definitions in 94-2-101 apply, 94-5-601
- endangering the welfare of children, elements, punishment, evidence, fine for benefit of disadvantaged minor, 94-5-607
- force to restrain or correct child, use of, 94-3-107
- incest, elements of offense, punishment, 94-5-606
- nonsupport of spouse, child, or other dependent, elements, punishment, fine for benefit of victim, 94-5-608
- prostitution, 94-5-603—See Prostitution
- sexual crimes—See Sex offenses, married persons
- theft from offender's spouse no defense, 94-6-306(2)

Felonies

- compounding a felony, elements, punishment, 94-7-305
- definition of "felony," 94-2-101(15)
- "forcible felony" defined, 94-2-101(17), 94-3-101

INDEX

References are to section numbers

Felonies (Continued)

- purpose and basis for classification of offenses, 94-1-105(1)
- time limitation on prosecution, 94-1-106(2)

Fences

- failure to close gate as criminal mischief, punishment, 94-6-102
- failure to fence well or other hole, punishment, 94-8-108

Fighting as disorderly conduct, punishment, 94-8-101

Firearms

- assault, presumption of purposely or knowingly causing reasonable apprehension if firearm pointed at another, 94-5-201(d)
- bringing armed men into the state, elements, punishment, 94-7-504
- concealed weapons, 94-8-210 to 94-8-217—See Concealed weapons
- discharge of firearm in town, city or private enclosure, punishment, 94-8-218
- discharging firearm as disorderly conduct, punishment, 94-8-101
- justifiable use of force, 94-3-101 to 94-3-112—See Justifiable use of force
- machine guns
 - crime of violence, possession or use of gun in, punishment, 94-8-202
 - definitions, 94-8-201
 - evidence of possession or use, presence of gun as, 94-8-205
 - exceptions to application of act, 94-8-206
 - offensive or aggressive purpose, possession or use of gun for, punishment, 94-8-203
 - failure to register gun as presumption of possession for offensive or aggressive purpose, 94-8-208
 - presumption of possession or use for offensive or aggressive purpose, 94-8-204
 - registration of guns, punishment for violation, 94-8-208
 - manufacturer's register, punishment for violation, 94-8-207
 - uniformity of interpretation of act, 94-8-209
- minors' possession or use, prohibitions and restrictions, liability of parent or guardian, 94-8-221, 94-8-222
- purchase of rifles or shotguns
 - residents of contiguous state, purchase in Montana, 94-8-220
 - residents of Montana, purchase in contiguous states, 94-8-219
- silencers, manufacture or sale for wrongful use, punishment, principals, presumption on possession, 94-8-223 to 94-8-225

Fires

- arson, elements of offense, punishment, 94-6-104
- negligent arson, elements, punishment, 94-6-103
- false alarms to agencies of public safety, elements, punishment, 94-7-205
- false report of fire as disorderly conduct, punishment, 94-8-101
- threat or false report of pending fire as offense of intimidation, 94-5-203(2)

Flag desecration, definition, elements, punishment, exceptions, 94-7-502

Force, justifiable use of, 94-3-101 to 94-3-112—See Justifiable use of force

"Forcible felony" defined, 94-2-101(17), 94-3-101(1)

Forgery, elements, definitions, punishment, 94-6-310

- physical evidence, tampering with or fabricating, elements, punishment, 94-7-208
- public records or information, tampering with, elements, punishment, 94-7-209

Fraud—See False pretense and fraud

"Frisk" defined, 94-2-101(16)

G

Gambling

- arrest of persons in possession or control of apparatus or premises, duty of officers, 94-8-410
- brace and bunco games prohibited, punishment, 94-8-406
- breaking and entering places used for gambling, authority of officers, 94-8-413
- bribes or payments, acceptance to protect offenders a felony, 94-8-417
- destruction of seized apparatus, duty of magistrate, 94-8-411

INDEX

References are to section numbers

Gambling (Continued)

enforcement of laws

law enforcement officials, duty to prosecute violations, removal from office for neglect or refusal, 94-8-414

mayor's duty to enforce laws, 94-8-415

neglect of duty by officers, punishment, forfeiture of office, 94-8-416

evidence, duty of magistrate to retain seized apparatus for trial, 94-8-411

games prohibited, punishment, 94-8-401

larceny, obtaining money or property by gambling or tricks as, 94-8-405

lessor of premises used for gambling treated as principal, 94-8-422

licensing of games for amusement or business trade stimulators, 94-8-401

application for license, expiration, 94-8-403

religious, fraternal or charitable organization exempt, 94-8-403

losses recoverable in civil action, procedure, 94-8-418 to 94-8-421

lotteries, 94-8-301 to 94-8-311—See Lotteries

moneys seized by officer and confiscated by court, deposit and credit to county

poor fund, 94-8-412

ordinances in conflict with state law void, 94-8-424

possession of gambling apparatus prohibited, punishment, 94-8-404

public nuisance, 94-8-409

"principal" defined, 94-8-425

effective date, 94-8-427

lessor of premises deemed principal, 94-8-422

punishment, 94-8-426

public nuisance, possession of apparatus as, 94-8-409

second offense, punishment, 94-8-408

seizure of apparatus, duty of officers, 94-8-410

slot machines unlawful, definitions, punishment, 94-8-428 to 94-8-431

soliciting persons to visit gambling resorts prohibited, punishment, 94-8-407

witnesses, immunity, 94-8-423

Gates, failure to close as criminal mischief, punishment, 94-6-102

"Government" defined, 94-2-101(18)

Guns—See Concealed weapons; Firearms

H

"Harm" defined, 94-2-101(19)

Hazard, elements of offense of creating a hazard, punishment, 94-8-108

creating a hazardous condition as disorderly conduct, 94-8-101

Homicide

definition and degrees of criminal homicide, 94-5-101

deliberate homicide, elements, punishment, 94-5-102

death sentence, enumeration of circumstances requiring, 94-5-105

mitigated deliberate homicide, elements, punishment, 94-5-103

negligent homicide, elements, punishment, 94-5-104

time limitation on prosecution, 94-1-106(1)

Homosexuality, elements of deviate sexual conduct, punishment, 94-5-505

"Human being" defined, 94-2-101(22)

Hunting, negligence or failure to give assistance to injured person as creating a hazard, punishment, 94-8-108

Husband and wife—See Family, offenses involving; Sex offenses, married persons

I

Identification marks

brands, elements of offense of illegal branding or altering or obscuring brand, punishment, 94-6-312

machine identification number or mark, elements of offense of obscuring the identity of a machine, punishment, 94-6-311

Impeachment or removal of public officers not affected by official misconduct law, 94-7-401(5)

Impersonating a public servant, elements, punishment, 94-7-210

INDEX

References are to section numbers

- Incest, elements, punishment, 94-5-606
- Indecent exposure, elements, punishment, 94-5-504
- Informants, tampering with informants, elements, punishment, 94-7-207
- Injury
 - "bodily injury" defined, 94-2-101(5)
 - "serious bodily injury" defined, 94-2-101(54)
- Insurance, damaging or destroying property to defraud insurer, criminal mischief, punishment, 94-6-102
- Intent, 94-2-103—See Mental state
- Intimidation, elements, punishment, 94-5-203
- Intoxicating substances
 - definition of "intoxicating substance," 94-2-101(25)
 - minors
 - possession of substance, punishment, 94-5-610
 - selling or giving substance to child, punishment, 94-5-609
- Intoxication
 - consent ineffective if given by intoxicated person, 94-2-111(2)
 - defense of intoxication, requirements for proof of, 94-2-109
- "Involuntary act" defined, 94-2-101(26)

J

- Jails—See Prisons and prisoners
- Judicial proceedings—See Courts
- Junk dealers, receiving or purchasing goods from child, punishment, 94-5-609
- Juries and jurors
 - bribery, elements, punishment, 94-7-102
 - criminal contempt, elements, punishment, 94-7-309
 - "juror" defined, 94-2-101(27)
 - threats and other improper influence in official matters, elements, punishment, 94-7-103
- Justifiable use of force
 - aggressor's use of force not justified, exceptions, 94-3-105
 - arrest, resisting by use of force unauthorized even if arrest unlawful, 94-3-108
 - compulsion to commit offense under threat of death or serious bodily harm, 94-3-110
 - death sentence, justification of acts of public servant, 94-3-109
 - defense of justifiable use of force an affirmative defense, 94-3-112
 - escape, use of force to prevent, 94-3-106
 - "force likely to cause death or serious bodily harm" defined, 94-3-101(2)
 - "forcible felony" defined, 94-2-101(17), 94-3-101(1)
 - occupied structure, use of force in defense of, 94-3-103
 - definition of "occupied structure," 94-2-101(35)
 - parent, guardian or teacher, use of force to restrain or correct child, 94-3-107
 - property other than occupied structure, use of force in defense of, 94-3-104
 - self-defense, 94-3-102

K

- Kidnaping, elements, punishment, 94-5-302
 - aggravated kidnaping, elements, 94-5-303(1)
 - death sentence, 94-5-303(2), 94-5-304
 - punishment where victim released, 94-5-303(2)
 - unlawful restraint, elements, punishment, 94-5-301

- Knowingly
 - acting purposely establishes knowledge, 94-2-110
 - definition of "knowingly," 94-2-101(28)

L

- Labels, deceptive business practices, elements, definitions, punishment, 94-6-308
- Larceny—See Theft

INDEX

References are to section numbers

Law enforcement authorities—See Peace officers

Legislature

- bribery in official matters, elements, punishment, 94-7-102
- falsification in official matters, 94-7-201 to 94-7-210—See Falsification in official matters
- gifts to public servants by persons subject to their jurisdiction, elements, punishment, 94-7-105
- “official proceeding” defined, 94-2-101(39)
- past official behavior, acceptance of compensation for, elements, punishment, 94-7-104
- perjury, 94-7-202—See Perjury
- threats and other improper influence in official matters, elements, punishment, 94-7-103

Letters, acts constituting violating privacy in communications, punishment, 94-8-114

Libel, 94-8-111—See Criminal defamation

Limitations on prosecutions, 94-1-106, 94-1-107—See Time limitations on prosecutions

Liquor—See Intoxicating substances; Intoxication

“intoxicating substance” defined, 94-2-101(25)

Livestock

- brands, elements of offense of illegal branding or altering or obscuring brand, punishment, 94-6-312
- cruelty to animals, elements, punishment, 94-8-106
- injuring or killing commonly domesticated animal as criminal mischief, punishment, 94-6-102

Lost or mislaid property, theft of, elements, punishment, 94-6-303

Lotteries

- agricultural fairs or rodeo associations, drawings exempt, 94-8-302
- aiding lotteries a misdemeanor, 94-8-305
- definition of “lottery,” 94-8-301
- drawing lotteries a misdemeanor, 94-8-403
- forfeiture of property offered in lottery, 94-8-308
- gambling, 94-8-401 to 94-8-431—See Gambling
- insuring tickets a misdemeanor, 94-8-307
- letting building for lottery a misdemeanor, 94-8-309
- opening or advertising lottery office a misdemeanor, 94-8-306
- out-of-state drawings, prohibitions applicable to, 94-8-310
- punishment, 94-8-311
- selling tickets a misdemeanor, 94-8-304

M

Machine guns, 94-8-201 to 94-8-209—See Firearms, machine guns

Malicious mischief, elements of criminal mischief, punishment, 94-6-102

Manslaughter

- mitigated deliberate homicide, elements, punishment, 94-5-103
- negligent homicide, elements, punishment, 94-5-104

Married persons—See Family, offenses involving; Sex offenses, married persons

Meetings, disturbing or disrupting lawful assembly or public meeting as disorderly conduct, punishment, 94-8-101

Mental disease or defect

- consent ineffective if given by reason of mental disease or defect, 94-2-111(2)
- “mentally defective” defined, 94-2-101(29)
- “mentally incapacitated” defined, 94-2-101(30)

Mental state

- absolute liability, 94-2-104
- application of prescribed mental state to each element of offense, 94-2-103(2)
- causal relationship between conduct and result, 94-2-105
- defenses based on absence of required mental state are affirmative defenses, 94-2-103(6)
- defenses based on reasonable belief that conduct does not constitute offense, 94-2-103(4)
- conviction of included offense authorized, 94-2-103(5)

INDEX

References are to section numbers

Mental state (Continued)

- intoxicated or drugged condition considered, 94-2-109
- "knowingly" defined, 94-2-101(28)
 - acting purposely establishes knowledge, 94-2-110
- knowledge of law not element of offense, 94-2-103(3)
- "negligently" defined, 94-2-101(32)
 - acting purposely or knowingly establishes negligence, 94-2-110
- "purposely" defined, 94-2-101(53)
- requirement of criminal act and particular mental state, 94-2-103(1)

Minors

- custodial interference, elements, punishment, 94-5-305
- endangering the welfare of children, elements, punishment, evidence, fine for benefit of disadvantaged minor, 94-5-607
- explosives, giving or selling to child, punishment, 94-5-609
- firearms, possession or use under fourteen, prohibitions and restrictions, liability of parent or guardian, 94-8-221, 94-8-222
- force to restrain or correct child or pupil, justifiable use of, by parent, guardian or teacher, 94-3-107
- intoxicating substances
 - possession of substance, punishment, 94-5-610
 - selling or giving substances to child, punishment, 94-5-609
- junk dealer, pawnbroker or secondhand dealer receiving or purchasing goods from child, punishment, 94-5-609
- nonsupport of child or other dependent, elements, punishment, fine for benefit of victim, 94-5-608
- refrigerator or other container, discarding where attractive to children, punishment, 94-8-108
- sexual crimes—See Sex offenses, age of victim

Misconduct in office, 94-7-401—See Official misconduct of public servant

Misdemeanors

- definition of "misdemeanor," 94-2-101(31)
- offenses defined by statutes other than Criminal Code to be classified, 94-1-105(2)
- purpose and basis for classification of offenses, 94-1-105(1)
- time limitation on prosecution, 94-1-106(2)

Motor vehicles—See Vehicles

- unauthorized use of motor vehicles, elements, punishment, 94-6-305

Murder—See Homicide

- criminal homicide, definition, degrees, 94-5-101
- deliberate homicide, elements, punishment, 94-5-102

N

Narcotics—See Intoxicating substances; Intoxication

- "intoxicating substance" defined, 94-2-101(25)

Negligence

- acting purposely or knowingly establishes negligence, 94-2-110
- definition of "negligently," 94-2-101(32)
- negligent arson, elements, punishment, 94-6-103
- negligent homicide, elements, punishment, 94-5-104

Noise, loud or unusual noises as disorderly conduct, punishment, 94-8-101

Nuisance

- creating hazardous or physically offensive condition as disorderly conduct, punishment, 94-8-101
- public nuisance, 94-8-107—See Public nuisance

O

Obscenity

- contraceptive drugs or devices, prohibited methods of distribution, 94-8-110.2—See Contraceptive drugs or devices
- definition, 94-8-110(2)
- elements of offense, 94-8-110(1)
- evidence, 94-8-110(3)

INDEX

References are to section numbers

Obscenity (Continued)

- motion picture theater employees, liability for prosecution, 94-8-110.3
- public display of offensive sexual material, definition, punishment, 94-8-110.1
- punishment for obscenity, 94-8-110(4)
- telephone communication constituting violation of privacy, punishment, 94-8-114

Obstructing a peace officer or other public servant, elements, punishment, 94-7-302
illegal action of officer no defense, 94-7-302(2)

Obstructing justice, definition, elements, punishment, 94-7-303

"Obtain" and "obtains or exerts control" defined, 94-2-101(33), (34)

"Occupied structure" defined, 94-2-101(35)

"Offender" defined, 94-2-101(36)

Offense

- definition of "offense," 94-2-101(37)
- requirement of criminal act and particular mental state, 94-2-103

"Official detention" defined, 94-2-101(38)

Official misconduct of public servant

- acquittal, reinstatement in office, 94-7-401(4)
- district court jurisdiction, commencement of action, 94-7-401(3)
- impeachment or removal proceedings not affected, 94-7-401(5)
- prohibited acts, 94-7-401(1)
- punishment, 94-7-401(2)
- suspension and forfeiture of office, 94-7-401(4)

"Official proceeding" defined, 94-2-101(39)

"Other state" defined, 94-2-101(40)

"Owner" defined, 94-2-101(41)

P

Pandering

- advertising or promoting sale of obscene materials, punishment, 94-8-110
- promoting prostitution, elements, punishment, 94-5-603

Parent and child—See Family, offenses involving; Minors

Pawnbrokers, receiving or purchasing goods from child, punishment, 94-5-609

Peace officers

- definition of "peace officer," 94-2-101(43)
- failure to aid peace officer, elements, punishment, 94-7-304
- false reports to authorities, elements, punishment, 94-7-206
- impersonating a public servant, elements, punishment, 94-7-210
- mistreating prisoners, elements, punishment, 94-8-113
- obstructing a peace officer, elements, punishment, 94-7-302
illegal action of officer no defense, 94-7-302(2)
- resisting arrest, elements, punishment, 94-7-301
force to resist arrest unauthorized even if arrest unlawful, 94-3-108
unlawful arrest no defense, 94-7-301(2)

"Pecuniary benefit" defined, 94-2-101(44)

Perjury, elements of offense, 94-7-202(1)

- corroborating proof of falsity required, 94-7-202(7)
- inconsistent statements, proof of falsity of one or the other not required, 94-7-202(6)
- irregularity of oath or affirmation or incompetency of declarant no defense, 94-7-202(4)
- material falsification, 94-7-202(3)
- punishment, 94-7-202(2)
- retraction of falsification, effect of, 94-7-202(5)

"Person" defined, 94-2-101(45)

"Physically helpless" defined, 94-2-101(46)

Police—See Peace officers

Political parties

- bribery, elements, punishment, 94-7-102
- "party official" defined, 94-2-101(42)

INDEX

References are to section numbers

"Possession" defined, 94-2-101(47)

"Premises" defined, 94-2-101(48)

Prisons and prisoners

"correctional institutions" defined, 94-2-101(10)

escape, elements of offense, punishment, 94-7-306

aiding offender to escape as obstructing justice, punishment, 94-7-303
force to prevent escape, justifiable use of, 94-3-106

gifts to public servants by persons subject to their jurisdiction, elements, punishment, 94-7-105

illegal articles, transferring to or by persons subject to official detention, elements, punishment, 94-7-307(1)

"an illegal article" defined, 94-2-101(23)

mistreating prisoners, elements, punishment, 94-8-113

"official detention" defined, 94-7-306(1)

unauthorized communication with person subject to official detention, elements, punishment, 94-7-307(2)

weapons, possession by prisoner prohibited, punishment, 94-8-213

Privacy in communications, acts constituting violations, punishment, 94-8-114

Profanity

disorderly conduct, punishment, 94-8-101

telephone communication using profane language, punishment, 94-8-114

Property

"enter or remain unlawfully" defined, 94-6-201

"occupied structure" defined, 94-2-101(35)

"premises" defined, 94-2-101(48)

"property" defined, 94-2-101(49)

"property of another" defined, 94-2-101(50)

"stolen property" defined, 94-2-101(60)

Prophylactics, prohibited methods of distribution, 94-8-110.2—See Contraceptive drugs or devices

Prosecution of offenses

application of Criminal Code, 94-1-103, 94-1-104

commencement of prosecution when indictment found or information or complaint filed, 94-1-106(5)

time limitations, 94-1-106, 94-1-107—See Time limitations on prosecutions.

Prostitution

elements of prostitution, punishment, 94-5-602

house of prostitution

definition, 94-2-101(20)

evidence, 94-5-603(4)

promoting prostitution, elements of offense, punishment, 94-5-603(1), (3)

aggravated promotion of prostitution, elements, punishment, 94-5-603(2), (3)

evidence on whether place is house of prostitution, 94-5-603(4)

"inmate" defined, 94-2-101(24)

Public nuisance

abatement action, 94-8-107(5)

definition of "public nuisance," 94-8-107(1)

elements of offense, 94-8-107(2)

extent of annoyance or damage, 94-8-107(3)

gambling apparatus, possession as public nuisance, 94-8-409

punishment for maintaining public nuisance, 94-8-107(4)

Public officers and employees

bribery, elements, punishment, 94-7-102

compensation for past official behavior, acceptance of, elements, punishment, 94-7-104

definition of "public servant," 94-2-101(52)

false reports to authorities, elements, punishment, 94-7-206

falsification in official matters, 94-7-201 to 94-7-210—See Falsification in official matters

gifts to public servants by persons subject to their jurisdiction, elements, punishment, 94-7-105

INDEX

References are to section numbers

Public officers and employees (Continued)

impersonating a public servant, elements, punishment, 94-7-210
misconduct in office, 94-7-401—See Official misconduct of public servant
obstructing a public servant, elements, punishment, 94-7-302
“official proceeding” defined, 94-2-101(39)
perjury, 94-7-202—See Perjury
threats and other improper influence in official matters, elements, punishment,
94-7-103

“Public place” defined, 94-2-101(51)

Public records or information

falsification in official matters, 94-7-201 to 94-7-210—See Falsification in official
matters
tampering with records or information, elements, punishment, 94-7-209

“Public servant” defined, 94-2-101(52)

“Purposely” defined, 94-2-101(53)

R

Railroads

criminal trespass to vehicles, elements, punishment, 94-6-202
depositing substance which will derail cars as creating a hazard, punishment,
94-8-108

Rape—See Sex offenses

sexual assault, elements, punishment, 94-5-502
sexual intercourse without consent, elements, punishment, 94-5-503

Refrigerator or other container, discarding where attractive to children, punishment,
94-8-108

Resisting arrest, elements, punishment, 94-7-301

force in resisting unauthorized even if arrest unlawful, 94-3-108
unlawful arrest no defense, 94-7-301(2)

Responsibility for criminal conduct—See Mental state

corporations, 94-2-112
intoxication, requirements to prove lack of criminal responsibility, 94-2-109

Riots

bringing armed men into the state, elements, punishment, 94-7-504
criminal syndicalism, 94-7-503—See Criminal syndicalism
disorderly conduct, 94-8-101—See Disorderly conduct
elements of offense of riot, 94-8-103(1)
punishment, 94-8-103(2)
incitement to riot, elements, punishment, 94-8-104

Robbery, elements of offense, 94-5-401(1)

“in the course of committing a theft” defined, 94-5-401(3)
punishment, 94-5-401(2)

S

Sales

chain distributor schemes, definitions, elements, punishment, 94-6-308.1
deceptive business practices, elements, definitions, punishment, 94-6-308

Secondhand dealers, receiving or purchasing goods from child, punishment, 94-5-609

Secured creditors, elements of offense of defrauding secured creditors, “security interest”
defined, punishment, 94-6-313

Sedition

bringing armed men into the state, elements, punishment, 94-7-504
criminal syndicalism, 94-7-503—See Criminal syndicalism

Self-defense, 94-3-102

Serial numbers, elements of offense of obscuring the identity of a machine, punishment,
94-6-311

INDEX

References are to section numbers

Sex offenses

age of victim

defense of offender's reasonable belief that victim above sixteen, 94-5-506(1)

no defense if child less than fourteen, 94-5-506(1)

sexual assault, punishment where victim less than sixteen and offender three or more years older, 94-5-502(3)

sexual intercourse without consent, punishment where victim less than sixteen and offender three or more years older, 94-5-503(3)

bigamy, 94-5-604, 94-5-605—See Bigamy

consent as defense, when ineffective, 94-2-111

"without consent" defined, 94-5-501(2)

contraceptive drugs or devices, prohibited methods of distribution, 94-8-110.2—See Contraceptive drugs or devices

definitions in 94-2-101 apply, 94-5-501

deviate sexual conduct, elements, punishment, 94-5-505

definition of "deviate sexual relations," 94-2-101(14)

incest, elements of offense, punishment, 94-5-606

indecent exposure, elements, punishment, 94-5-504

married persons

indecent exposure, spouse excluded, 94-5-504(1)

sexual assault, spouse excluded, 94-5-502(1)

sexual intercourse without consent, spouse excluded, 94-5-503

"spouse" defined for purposes of offenses excluding conduct with a spouse, 94-5-506(2)

obscenity, elements, definitions, evidence, punishment, 94-8-110—See Obscenity

prostitution, 94-5-603—See Prostitution

public display of offensive sexual material, definition, punishment, 94-8-110.1

sexual assault, elements, punishment, 94-5-502

"sexual contact" defined, 94-2-101(55)

"sexual intercourse" defined, 94-2-101(56)

sexual intercourse without consent, elements, punishment, 94-5-503

Silencers, manufacture or sale for wrongful use, punishment, principals, presumption on possession, 94-8-223 to 94-8-225

Slot machines unlawful, definitions, punishment, 94-8-428 to 94-8-431

Sodomy

deviate sexual conduct, elements, punishment, 94-5-505

sexual intercourse without consent, elements, punishment, 94-5-503

definition of "sexual intercourse," 94-2-101(56)

Solicitation

definition of "solicit" or "solicitation," 94-2-101(57)

elements of offense, 94-4-101(1)

punishment, 94-4-101(2)

soliciting, aiding or abetting another in planning or commission of offense, legal accountability for, exceptions, 94-2-107(3)

Sporting events, elements of bribery in contests, punishment, 94-8-112

"State" or "this state" defined, 94-2-101(58)

"Statute" defined, 94-2-101(59)

Steam engine or steam boiler, use in unsafe condition as creating a hazard, punishment, 94-8-108

Stolen property, obtaining control as theft, elements, punishment, 94-6-302(3), (4)

definition of "stolen property," 94-2-101(60)

"Stop" defined, 94-2-101(61)

Strict construction rule not applicable to Criminal Code, 94-1-102(2)

Strict liability, 94-2-104

Suicide, aiding or soliciting, elements, punishment, 94-5-106

Support

endangering the welfare of children, elements, punishment, evidence, fine for benefit of disadvantaged minor, 94-5-607

nonsupport of spouse, child, or other dependent, elements, punishment, fine for benefit of victim, 94-5-608

Switchblade knives, possession or sale, punishment, collectors exempt, 94-8-226

Syndicalism, 94-7-503—See Criminal syndicalism

INDEX

References are to section numbers

T

Tampering

- definition of "tamper," 94-2-101(62)
- evidence, tampering with or fabricating physical evidence, elements, punishment, 94-7-208
- witnesses or informants, tampering with, elements, punishment, 94-7-207

Telephone and telegraph

- damage to property causing interruption or impairment of public communication services as criminal mischief, punishment, 94-6-102
- failure to yield party line or public telephone
 - elements of offense, punishment, defenses, 94-8-109(1), (2)
 - false pretext to place emergency call, punishment, 94-8-109(3)
 - printing of law in telephone directory, 94-8-109(4)
- privacy in communications, elements of offense, punishment, 94-8-114
- theft of services, proof of element of deception, 94-6-304.1
- threatening, profane or abusive language as disorderly conduct, punishment, 94-8-101
- wiretapping, acts constituting violating privacy in communications, punishment, 94-8-114

Theaters

- motion picture theater employees, liability for prosecution, 94-8-110.3
- obscenity, definition, evidence, punishment, 94-8-110—See Obscenity
- public display of offensive sexual material, definition, punishment, 94-8-110.1

Theft

- burglary, 94-6-204—See Burglary
- communication services, obtaining with intent to defraud, 94-6-304.1
- definitions in 94-2-101 apply, 94-6-301
- "deprive" defined, 94-2-101(13)
- gambling or tricks, obtaining money by means of, larceny, 94-8-405
- interest of offender in property no defense, 94-6-306
- labor or services, obtaining as theft, elements, punishment, 94-6-304
- lost or mislaid property, obtaining control as theft, punishment, 94-6-303
- married persons, no defense that theft from offender's spouse, 94-6-306(2)
- motor vehicles, unauthorized use of, elements, punishment, 94-6-305
- "obtains or exerts control" defined, 94-2-101(34)
- "owner" defined, 94-2-101(41)
- "possession" defined, 94-2-101(47)
- "property" defined, 94-2-101(49)
- "property of another" defined, 94-2-101(50)
- robbery, elements, punishment, "in the course of committing a theft" defined, 94-5-401
- stolen property, obtaining control as theft, elements, punishment, 94-6-302(3), (4)
 - definition of "stolen property," 94-2-101(60)
- temporary use of property, obtaining as theft, elements, punishment, 94-6-304
- threat or deception to obtain control over property of the owner as theft, elements, punishment, 94-6-302(2), (4)
- time limitation on prosecution extended for theft involving breach of fiduciary obligation, 94-1-106(3)
- unauthorized control over property of the owner as theft, elements, punishment, 94-6-302(1), (4)
- "value" defined, 94-2-101(64)

Threats

- definition of "threat," 94-2-101(63)
- disorderly conduct, threatening language as, punishment, 94-8-101
- official and political matters, intimidation to influence behavior of public officials, elements, punishment, 94-7-103
- telephone communication threatening injury or physical harm, punishment, 94-8-114
- theft, threats to obtain control over property of the owner, elements, punishment, 94-6-302(2), (4)

Time limitations on prosecutions

- commencement of time on day after offense committed, 94-1-106(4)
- felony, 94-1-106(2)
- homicide, 94-1-106(1)

INDEX

References are to section numbers

Time limitations on prosecutions (Continued)

- misdemeanor, 94-1-106(2)
- prosecution commenced when indictment found or information or complaint filed, 94-1-106(5)
- theft involving breach of fiduciary obligation, extension of period, 94-1-106(3)
- tolling of period of limitation, 94-1-107
- when offense committed, 94-1-106(4)

Title and citation of Criminal Code, 94-1-101

Traffic, rendering vehicular or pedestrian traffic impassable as disorderly conduct, punishment, 94-8-101

Trespass

- "enter or remain unlawfully" defined, 94-6-201
- property, criminal trespass to, elements, punishment, 94-6-203
- vehicles, criminal trespass to, elements, punishment, 94-6-202

U

Unlawful restraint, elements, punishment, 94-5-301

Utilities

- damage to property causing interruption of impairment of public services as criminal mischief, punishment, 94-6-102
- gifts to public servants, elements of offense, punishment, 94-7-105

V

"Value" defined, 94-2-101(64)

Vehicles

- criminal trespass to vehicles, elements, punishment, 94-6-202
- definition of "vehicle," 94-2-101(65)
- "enter or remain unlawfully" defined, 94-6-201
- identification number, elements of offense of obscuring the identity of a machine, punishment, 94-6-311
- unauthorized use of motor vehicles, elements, punishment, 94-6-305

Voters

- bribery, elements, punishment, 94-7-102
- threats and other improper influence, elements, punishment, 94-7-103

W

Water

- damage to property causing interruption or impairment of public water supply as criminal mischief, punishment, 94-6-102
- failure to cover or fence well, cistern, cesspool or other hole, punishment, 94-8-108

Weapons—See also Explosives; Firearms

- concealed weapons, 94-8-210 to 94-8-217—See Concealed weapons
- definition of "weapon," 94-2-101(66)
- justifiable use of force, 94-3-101 to 94-3-112—See Justifiable use of force
- switchblade knives, possession or sale, punishment, collectors exempt, 94-8-226

Weights, measures and grades, deceptive business practices, elements, definitions, punishment, 94-6-308

Wells, failure to cover or fence, punishment, 94-8-108

Wiretapping, acts constituting violating privacy in communications, punishment, 94-8-114

Witnesses

- criminal contempt, elements, punishment, 94-7-309
- definition of "witness," 94-2-101(67)
- falsification in official matters, 94-7-201 to 94-7-210—See Falsification in official matters
- gambling investigations or proceedings, immunity of witnesses, 94-8-423
- perjury, 94-7-202—See Perjury
- tampering with witnesses, elements, punishment, 94-7-207

MONTANA
STATE LAW LIBRARY

REVISED CODES OF MONTANA

VOLUME 8

1975 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 8 OF THE
1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 8
THROUGH VOLUME 535, PACIFIC REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



Copyright © 1971, 1973, 1974 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1976 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

NEW LAWS IN VOLUME 8

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1973

Civil and constitutional rights lost on conviction of crime, 95-2227.
Corroboration required of person legally accountable for crime, 95-3012.
Double jeopardy and multiple prosecutions, 95-1711.
Extradition of persons charged with crime, 95-3101 to 95-3130.
Fines and forfeitures, disposition, 95-2228, 95-2229.
Homicide prosecution, burden of proof, 95-3004.
Parolee or probationer under interstate supervision, violation of conditions by, 95-3202.1 to 95-3202.4.
Persistent felon offender, increased sentence for, 95-1507.
Self-incriminating testimony, compelling on grant of immunity, 95-1807.
Sentence in criminal cases, 95-2206 to 95-2206.4.
Stop and frisk, 95-719.
Witnesses subject to interstate summons, 95-1808.

ENACTED IN 1974

Shoplifting, definitions and proof, 95-611.1, 95-611.2.

ENACTED IN 1975

Disqualification of justice, magistrate, or justice of the peace, 95-2010.
Furlough, supervising agency responsible for activities of prisoner, 95-2226.1.
Persistent felony offenders, judicial designation for parole eligibility, 95-2206.5.
Probation and parole, 95-3301 to 95-3302.1, 95-3304, 95-3306, 95-3307, 95-3309.
Uniform Criminal Extradition Act, expenses for returning fugitives, 95-3124.1.

AMENDMENTS IN VOLUME 8

Arrest by private person, 95-611.
Assisting a peace officer, 95-609.
Competency of accused, 95-505 to 95-508.
Coroner's office, 95-802, 95-803.
Counsel for indigent defendants, payment, 95-1005.
Dismissal of prosecution, 95-1703.
Execution of sentence, 95-2305, 95-2311.
Executive clemency, 95-3223, 95-3224, 95-3228.
Grand jury, 95-1401, 95-1402, 95-1410.
Impeachment of officers, 95-2801, 95-2802.
Jury trial of criminal prosecutions, 95-1901, 95-1909, 95-1910, 95-1915.
Probation, parole and clemency, 95-3203 to 95-3206, 95-3214, 95-3215, 95-3303, 95-3308.
Roadblocks, checking for driver's license, 95-618.
Sentence and judgment, 95-2007, 95-2217 to 95-2224.
Trial, justice and police courts, 95-2003, 95-2005.
Verdict in criminal case, 95-2006.

MONTANA REVISED CODES

TITLE 94—CRIMES AND CRIMINAL PROCEDURE

Chapter 513, Laws of 1973, created the Montana Criminal Code of 1973 which completely replaces the original Title 94 of the Revised Codes of Montana as heretofore amended.

All of Title 94, the Montana Criminal Code of 1973, including supplementary materials through the 1975 Session of the 44th Legislative Assembly is published in a separate special supplement issued with the 1975 Pocket Supplements to the Codes.

A Cross Reference Table, appearing in the special pamphlet beginning on page 166, shows, for each section of old Title 94, either the place to which the new section has been transferred by renumbering or the sections, either in new Title 94 or other titles of the Revised Codes, which cover the same subject matter.

Also included in the separate pamphlet edition are Source Notes and Commission Comments on the various sections of the new Criminal Code, and a special Index, beginning on page 197.

TITLE 95—MONTANA CODE OF CRIMINAL PROCEDURE

Chapter.

5. Competency of accused, 95-505 to 95-508.
6. Arrest, 95-609, 95-611, 95-611.1, 95-611.2, 95-618.
7. Search and seizure, 95-719.
8. The office of the coroner, 95-803.
10. Right to counsel, 95-1005.
14. Grand jury, 95-1401, 95-1402, 95-1410.
15. Charging an offense, 95-1504, 95-1507.
17. Pretrial motions, 95-1703, 95-1711.
18. Production and suppression of evidence, 95-1807, 95-1808.
19. Trial in district court, 95-1901, 95-1909, 95-1910, 95-1915.
20. Justice and police court proceedings, 95-2003, 95-2005 to 95-2007, 95-2010.
22. Sentence and judgment, 95-2206 to 95-2206.5, 95-2217 to 95-2224, 95-2226.1, 95-2227 to 95-2229.
23. Execution of sentence, 95-2305, 95-2311.
28. Impeachment, 95-2801, 95-2802.
30. Evidence, 95-3004, 95-3012.
31. Uniform Criminal Extradition Act, 95-3101 to 95-3130.
32. Probation, parole and clemency, 95-3202.1 to 95-3202.4, 95-3203 to 95-3206, 95-3214, 95-3215, 95-3223, 95-3224, 95-3228.
33. Probation and parole (Continued), 95-3301 to 95-3309.

CHAPTER 1—SCOPE, PURPOSE, CONSTRUCTION AND RULES

Section

95-103 to 95-108. [Transferred.]

95-103 to 95-108. [Transferred.]

Compiler's Notes

The compiler originally designated these sections as secs. 95-2801 to 95-2806. However, Chapter 513, Laws of 1973, transferred certain other sections from Title 94 to appear as sections 95-2801 to 95-2819. In order to avoid confusion, the compiler has transferred these sections to appear as secs. 95-103 to 95-108. Since there has been no change in text, these sections are not

reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-103	95-2801
95-104	95-2802
95-105	95-2803
95-106	95-2804
95-107	95-2805
95-108	95-2806

CHAPTER 2—DEFINITIONS

95-206. Judge.

Justice of the Peace Courts

Since, by virtue of section 95-2009, a defendant tried in a justice of the peace court is provided with the right to a trial de novo, the word "judge" in section 95-1709 does not include "justice of the peace" and a justice of the peace may not be disqualified on a simple affidavit for substitution of judge under section 95-1709, rather the provisions of chapter

95-20 must be followed. *Bailey v. State*, — M —, 517 P 2d 708.

Police Magistrate

Police courts are courts of limited jurisdiction and have only such authority as is expressly conferred upon them, which does not include authority to issue search warrants. *State v. Tropf*, — M —, 530 P 2d 1158.

95-210. Peace officer.**Cross-References**

Certain employees of state highway commission as peace officers, secs. 32-1631.1 to 32-1641.

Members of Montana university system security department as peace officers, sec. 75-8513.

CHAPTER 4—VENUE**95-402. Where offense committed partly in one, etc.****Multiple Offenses**

Action against defendant, who was charged with 52 offenses committed in several counties, was properly venued in the

county where the information was filed, even though elements of some of the offenses may have occurred in another county. *State v. Bretz*, — M —, 534 P 2d 496.

95-408. Stolen property.**Offenses in Several Counties**

Defendant who was charged with 52 offenses committed in several different counties, any one of which counties would have been proper venue for trial, was not entitled to change of venue, since complaint

was filed in a county of proper venue and no evidence of prejudice or other legal reason was shown as a basis for granting the change of venue. *State v. Bretz*, — M —, 534 P 2d 496.

CHAPTER 5—COMPETENCY OF ACCUSED**Section**

- 95-505. Psychiatric examination of defendant with respect to mental disease or defect.
- 95-506. Determination of fitness to proceed—effect of finding of unfitness—proceedings if fitness is regained.
- 95-507. Determination of irresponsibility on basis of report—access to defendant by psychiatrist of his own choice—form of expert testimony when issue of responsibility is tried.
- 95-508. Legal effect of acquittal on the ground of mental disease or defect excluding responsibility—commitment—release or discharge.

95-501. Mental disease or defect excluding responsibility.**M'Naughten and Irresistible Impulse Rules Abandoned**

The M'Naughten and "irresistible impulse" rules no longer apply, having been supplanted by the definition of criminal irresponsibility in subsection (a); the definition in subsection (a) is the same as that adopted by the American Law Institute in Article IV, Section 4.01 of the Model Penal Code except that Montana legislature substituted "is unable" for "lacks substantial capacity"; by that change the legislature intended to impose a stricter test for mental incapacity than that contemplated by the Model Penal Code. *State ex rel. Krutzfeldt v. District Court, Thirteenth Judicial Dist., Yellowstone County*, — M —, 515 P 2d 1312.

Release after Acquittal for Mental Disease

Defendant's motion for acquittal should have been granted where the uncontradicted testimony of doctor, based on examination, testing, and observation over a period of several years was to the effect that defendant had been unable to conform his conduct to the law at the time of the crime; however, entry of acquittal does not allow defendant to be released from mental institution until determination by district judge that defendant is no longer dangerous. *State ex rel. Main v. District Court*, — M —, 525 P 2d 28.

95-503. Mental disease or defect excluding responsibility, etc.**Burden of Proof**

State was not obliged to present proof

of defendant's sanity in rape prosecution. *State v. Olson*, 156 M 339, 480 P 2d 822.

95-505. Psychiatric examination of defendant with respect to mental disease or defect. (1) When the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one (1) qualified psychiatrist or shall request the superintendent of Warm Springs state hospital to designate at least one (1) qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty (60) days or such longer period as the court determines to be necessary for the purpose, and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(2) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the mental condition of the defendant;

(c) If the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(d) When a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the ability of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law at the time of the criminal conduct charged; and

(e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(4) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(5) The report of the examination shall be filed (in triplicate) with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "Warm Springs state hospital" in the first sentence of subsection (1) for "Montana state hospital"; and made minor changes in phraseology, punctuation and style.

Acquittal Denied

Report of psychiatrist from state hospital finding no mental disease or defect precludes the granting of a pretrial acquittal. *State v. French*, — M —, 531 P 2d 373.

95-506. Determination of fitness to proceed—effect of finding of unfitness—proceedings if fitness is regained. (1) When the defendant's

fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under section 95-505, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (3) of this section, and the court shall commit him to the custody of the superintendent of Warm Springs state hospital, to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. When the court, on its own motion or upon the application of the superintendent of Warm Springs state hospital, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant committed to an appropriate institution of the department of institutions.

(3) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(4) The expenses of sending the defendant to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city or county bound to provide for and maintain him elsewhere.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974.

Amendments

The 1973 amendment added subsection (4).

The 1974 amendment substituted "Warm

Springs state hospital" for "Montana state hospital" in subsection (2); substituted "department of institutions" for "state department of public institutions" in subsection (2); deleted "public" before "institutions" in subsection (4); and made minor changes in phraseology, punctuation and style.

95-507. Determination of irresponsibility on basis of report—access to defendant by psychiatrist of his own choice—form of expert testimony when issue of responsibility is tried. (1) If the report filed under section 95-505 finds that the defendant at the time of the criminal conduct charged

suffered from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing if a hearing is requested by the attorney prosecuting or the defendant, is satisfied that the mental disease or defect was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

(2) When either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert, selected by the one proposing the examination, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

(3) Upon the trial, any psychiatrist who reported under section 95-505 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury shall not be informed that the psychiatrist was designated by the court or by the superintendent of Warm Springs state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by another witness.

(4) When a psychiatrist or other expert who has examined the defendant testifies concerning his mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law or to have a particular state of mind which is an element of the offense charged. He may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "Warm Springs state hospital" for "Montana state hospital" in subsection (3); and made minor changes in phraseology, punctuation and style.

Release after Acquittal for Mental Disease

Defendant's motion for acquittal should have been granted where the uncontradicted testimony of doctor, based on examination, testing, and observation over a period of several years was to the effect that defendant had been unable to conform his conduct to the law at the time of the crime; however, entry of acquittal does not allow defendant to be released from mental institution until determination by

district judge that defendant is no longer dangerous. *State ex rel. Main v. District Court*, — M —, 525 P 2d 28.

Severance of Trial on Sanity

Denial of defendant's motion for severance for trial of the issues of defendant's guilt or innocence and his sanity was proper since this section and section 95-508 provide for those matters to be presented at same trial and to same jury. *State v. Olson*, 156 M 339, 480 P 2d 822.

Trial of Issue of Sanity to both Court and Jury

Defendant who elected to try issue of sanity to trial judge alone was not, after unfavorable finding by court, foreclosed from presenting defense of insanity to the jury. *State ex rel. Krutzfeldt v. District Court, Thirteenth Judicial Dist., Yellowstone County*, — M —, 515 P 2d 1312.

95-508. Legal effect of acquittal on the ground of mental disease or defect excluding responsibility—commitment—release or discharge. (1) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment. A person so confined shall have a hearing, unless waived, within fifty (50) days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released. According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary, or shall be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care and treatment.

(2) If the superintendent of Warm Springs state hospital believes that a person committed to his custody, under subsection (1) of this section, may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of the person in a report to the court by which the person was committed, and shall send a copy of the application and report to the county attorney of the county from which the defendant was committed. The court shall then appoint at least two (2) qualified psychiatrists to examine the person and to report within sixty (60) days, or a longer period which the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate the examinations and the proceedings thereon, the court may have the person confined in any institution located near the place where the court sits, which may hereafter be designated by the superintendent of Warm Springs state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (2) of this section, and the testimony of the reporting psychiatrists which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary. If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding and the burden is upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall then be discharged or released on conditions which the court determines to be necessary, or shall be recommitted to the custody of the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the procedure prescribed above in subsections (2) and (3).

(4) If, within five (5) years after the conditional release of a committed person, the court determines, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the procedure prescribed above in subsections (2) and (3).

(5) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon the application is the same as that prescribed above in the case of an application by the superintendent of Warm Springs state hospital. However, an application by a committed person need not be considered until he has been confined for a period of not less than six (6) months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person shall not be permitted to file a further application until one (1) year has elapsed from the date of any preceding hearing on an application for his release or discharge.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974.

Amendments

The 1973 amendment added the second, third, fourth and fifth sentences to subsection (1); inserted "by a preponderance of the evidence" in the fourth sentence of subsection (3); and substituted "in subsections (2) and (3)" for "for a first hearing" at the end of subsections (3) and (4).

The 1974 amendment substituted "Warm Springs state hospital" for "Montana state hospital" throughout the section; and

made minor changes in phraseology, punctuation and style.

Release after Acquittal

Person acquitted of a crime on the grounds of mental disease or defect may later be released from commitment in the state hospital only if the release is recommended both by the hospital superintendent and also by the district judge after hearing and determination beyond a reasonable doubt that the person committed will not be dangerous in the foreseeable future. State ex rel. Main v. District Court, — M —, 525 P 2d 28.

DECISIONS UNDER FORMER LAW

Burden of Proof

For release of persons committed to state hospital under this section it must be established by evidence convincing beyond a reasonable doubt that release can be effected without danger to the public. State v. Taylor, 158 M 323, 491 P 2d 877, certiorari denied in 406 US 978.

Psychiatrists' Statement

Habeas corpus petition by person committed under this section requires statement by two psychiatrists before it may be considered. Petition of Brown, 159 M 550, 497 P 2d 1038 (Decision prior to 1973 amendment).

CHAPTER 6—ARREST

Section

- 95-609. Assisting a peace officer.
- 95-611. Arrest by a private person.
- 95-611.1. Definitions.
- 95-611.2. Concealment not proof of theft.
- 95-618. Roadblocks.

95-603. Issuance and service of arrest warrant upon complaint.

Examination before Issuing Warrant

Arrest warrant was invalid and subsequent search and seizure unlawful where

complaint of deputy county attorney, under oath, disclosed nothing more than conclusion that defendant sold quantity

of marijuana to undercover narcotics agent, complainant was not examined under oath, and undercover agent could not say that he had purchased from de-

fendant. State ex rel. Wicks v. District Court, 159 M 434, 498 P 2d 1202, distinguished in 507 P 2d 1055, 1056.

95-606. Arrest without a warrant.

Validity of Warrantless Arrest

A warrantless arrest was valid under section 95-608(d) where detectives smelled burning marijuana emanating from the open doorway to an apartment, where upon entering the apartment police officers saw a clear plastic bag of marijuana and a

burned marijuana stub, where probable cause was supported by information from reliable informants concerning previous drug activity in the apartment, and the building owner had informed the police of possible drug use. State v. Bennett, 158 M 496, 493 P 2d 1077.

95-608. Arrest by a peace officer.

Probable Cause

Probable cause existed for arrest on dangerous drug charges of three persons who were present and lived in house where drugs were found; but probable cause did not exist concerning fourth party who was present on premises but did not live there, notwithstanding later finding of drugs on such party, since mere presence in place was insufficient to justify arrest. State ex rel. Glantz v. District Court, 154 M 132, 461 P 2d 193.

The mere presence of the defendant's car in the area, footprints in the general vicinity, and the fact that defendant missed work was not sufficient to constitute probable cause for his arrest without a warrant for malicious trespass. State v. Fetters, — M —, 526 P 2d 122.

Reasonable Grounds

Defendant's arrest was based on reasonable grounds required by subsection (d) of this section where an informer had

indicated a "pot party" was in progress, defendant was a guest at the party and a participant therein, and the aroma of burning or burnt marijuana was emanating from the premises, all of which was known to the officers prior to their entry, arrest and search. State v. Hull, 158 M 6, 487 P 2d 1314.

A warrantless arrest was valid under subdivision (d) of this section where detectives smelled burning marijuana emanating from the open doorway to an apartment, saw a clear plastic bag of marijuana and a burned marijuana stub upon entering the apartment, where probable cause was supported by information from reliable informants concerning previous drug activity in the apartment, and the building owner had informed the police of possible drug use. State v. Bennett, 158 M 496, 493 P 2d 1077.

"Reasonable grounds" and "probable cause" are synonymous. State v. Fetters, — M —, 526 P 2d 122.

95-609. Assisting a peace officer. (a) A peace officer making a lawful arrest may command the aid of persons eighteen (18) years of age or older.

(b) and (c) * * * [Same as parent volume.]

History: En. 95-609 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 60, Ch. 535, L. 1975.

Amendments

The 1975 amendment deleted "male" be-

fore "persons" in subsection (a); and substituted "eighteen (18) years of age or older" for "over the age of eighteen (18)" in subsection (a).

95-611. Arrest by a private person. A private person may arrest another when:

(1) he believes, on reasonable grounds, that an offense is being committed or attempted in his presence;

(2) a felony has in fact been committed and he believes, on reasonable grounds, that the person arrested has committed it; or

(3) he is a merchant, as defined in section 64-212, and has probable cause to believe the other is shoplifting in the merchant's store. Such mer-

chant may stop and temporarily detain the suspected shoplifter; the merchant in such event:

(a) shall promptly inform the person that the stop is for investigation of shoplifting, and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;

(b) may demand of the person his name and his present or last address and may question the person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting;

(c) may take into possession any merchandise for which the purchase price has not been paid and which is in the possession of the person or has been concealed from full view; and

(d) may place the person under arrest or request the person to remain on the premises until a peace officer arrives.

Any stop, detention, questioning or recovery of merchandise under this subsection shall be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant this section shall not authorize a search of the detained person other than a search of his coat or other outer garments and any package, brief case or other container unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or thirty (30) minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer.

(4) Such stop and temporary detention, with or without questioning or removal of merchandise, when done by a merchant in compliance with the law, shall not constitute an unlawful arrest or search. A merchant stopping, detaining, or arresting a person on the belief that such person is shoplifting, is not liable for damages to such person unless the merchant acts with malice either actual or implied or contrary to the provisions of this law.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974.

Amendments

The 1974 amendment added subdivisions (3) and (4) and made minor changes in phraseology, punctuation and style.

95-611.1. Definitions. As used in this act:

(1) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct shall be prima facie evidence of concealment: concealing merchandise upon the person, or in a container, or otherwise removing such merchandise from full view while upon the premises; or removing, changing, or altering any price tag; or transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale by the merchant; or abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise.

(2) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

History: En. 95-611.1 by Sec. 1, Ch. 274, L. 1974.

amending sections 95-611 and 11-1602, R. C. M. 1947, expanding a citizen's right to detain and arrest offenders and limiting civil actions based on such detentions and arrests.

Title of Act

An act defining shoplifting as theft;

95-611.2. Concealment not proof of theft. Concealment of merchandise shall not constitute proof of the commission of the offense of theft.

History: En. 95-611.2 by Sec. 2, Ch. 274, L. 1974.

95-618. Roadblocks. (a) * * * [Same as parent volume.]

(b) Authority to Establish Roadblocks. The duly elected or appointed law-enforcement officers of this state, and their deputies, are hereby authorized to establish, in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, checking for driver's licenses, and apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States, who are using the highways of this state.

(c) to (e) * * * [Same as parent volume.]

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971.

Amendments

The 1971 amendment inserted "checking for driver's licenses" in subsection (b).

CHAPTER 7—SEARCH AND SEIZURE

Section

95-719. Stop and frisk.

95-701. Searches and seizures—when authorized.

Consent

Where defendant in first-degree murder prosecution had taken sheriff to his house and turned over alleged murder weapon to sheriff, such action did not constitute an illegal search and seizure since defendant voluntarily consented to turning over rifle. *State v. Williams*, 153 M 262, 455 P 2d 634.

Where appellant, convicted on charge of robbery, had been given three Miranda warnings during course of investigation, evidence obtained from appellant's apartment after he gave consent to police to go there was not the product of an unlawful search and seizure and therefore its admission was not error, notwithstanding that no warrant was issued for such search. *State v. Braden*, 154 M 90, 460 P 2d 85.

Defendant's consent to the search of his car was voluntary even though he had

spent the night in jail and was still in custody, where defendant had previously been arrested and knew his rights and had told officers that his car was full of marijuana and knew that a search warrant would be issued. *State ex rel. Kotwicki v. District Court*, — M —, 532 P 2d 694.

Lawful Inspection

Sheriff who was called to search for prowler was justified under subsection (d) of this section in seizing items in plain view during such search. *State v. Gallagher*, — M —, 509 P 2d 852.

Liability of Sheriff

The action of a police officer proceeding on the basis of his reasonable, good faith understanding of the law cannot be tortious, and where the sheriff has made an arrest pursuant to evidence discovered un-

der authority of a search warrant that was valid on its face, the arrested person cannot recover for false arrest or imprisonment, even though the search warrant is later declared to be invalid by the court. *Strung v. Anderson*, — M —, 529 P 2d 1380.

Prior Justification

Police officers who, acting upon suspicion that defendant was a runaway juvenile, had taken defendant to the sheriff's office for the purpose of identifying her and contacting her parents, were without sufficient justification for searching defendant's purse for identification where defendant had produced two items of identification and had informed officers that she had a birth certificate at her home which would substantiate the identification; marijuana and hashish found in search of defendant's purse was excluded since there was no valid reason for the officer's presence in defendant's purse and the "plain view" doctrine was

not applicable. *State v. Hough*, — M —, 516 P 2d 613.

Search by Private Citizen

Exclusionary rule of evidence must apply to all searches and seizures, especially where there is also violation of defendant's protection against self-incrimination, and thus motion to suppress evidence was properly granted where employer removed marijuana from defendant's coat in a search without warrant. *State v. Coburn*, — M —, 530 P 2d 442.

Search Without Warrant

Police officers who had been given description of automobile and its occupants who were suspected of having recently robbed a pharmacy had probable cause to believe the vehicle was carrying stolen property, and evidence obtained in search of automobile without warrant was admissible. *State v. Spielmann*, — M —, 516 P 2d 617.

95-702. Scope of search without warrant.

Probable Cause

Although reasonable search without warrant is permitted incident to lawful arrest, the search cannot be used to establish the probable cause which justifies the arrest. *State v. Fetters*, — M —, 526 P 2d 122.

Reasonable Search

Action of police officer was reasonable in searching the automobile of defendant who was arrested while driving under the influence and a marijuana cigarette and a bag of marijuana found in the automobile were admissible in evidence. *State v. Turner*, — M —, 523 P 2d 1386.

95-703. Search warrant defined.

"In the Name of the State"

In all criminal matters and particularly in matters that pertain to search warrants, notice to the person subject to the process, stating the name of the court and to whom he may address his grievances, is a matter of substantive due process, and although the warrant is issued in the name of the state, omission or error regarding the name of the court is an infringement of rights and is prejudicial error. *State v. Tropf*, — M —, 530 P 2d 1158.

Sufficient Description of Premises To Be Searched

Search warrant which described the premises to be searched as "two cabins located near the Duck Creek 'Y', near west Yellowstone, Montana, near the office building at Koelzer's Duck Creek cabins" was of insufficient particularity where there were three cabins in the area of the office building and where police had good reason to believe that only one of the houses contained controlled substances. *State v. Ballew*, — M —, 516 P 2d 1159.

95-704. Grounds for search warrant.

Authority to Issue Warrant

The word "judge" used in this section does not include a police magistrate as a person authorized to issue search warrants, and thus any search warrant issued by a police magistrate is void. *State v. Tropf*, — M —, 530 P 2d 1158.

Description of Place and Property

Warrant which directed law enforcement personnel to search a 1969 blue one-

half ton Chevrolet pick up, Montana license 2T-5275 located in Custer County garage in Miles City, County of Custer, State of Montana sufficiently described object of search. *State v. Meidinger*, 160 M 310, 502 P 2d 58.

Search warrants stating the street address of the house to be searched was a sufficient description of the premises under this section. *State v. Paschke*, — M —, 527 P 2d 569.

General Warrant

Search warrants which incorporated phrase "any .22 caliber pistol" and "any other property or evidence they might discover that may connect to the demise" of deceased was not a "general warrant," and therefore was not constitutionally invalid. *State v. Quigg*, 155 M 119, 467 P 2d 692, distinguished in 160 M 344, 502 P 2d 1138.

"Probable Cause"

There was not probable cause for issuance of search warrant for burglar tools and illegal drugs based on judge's personal knowledge of the accused's reputation and witnesses' observations of a pillow and tools in his car from which accused drew gun. *State v. Bentley*, 156 M 129, 477 P 2d 345.

Affidavit, based on hearsay from reliable and credible informants with no felony convictions, was sufficient basis for a search warrant for dangerous drugs where informants' statements were results of direct personal observations, reliable information as to the present status of the situation existed, and the police officers made corroborative statements that the suspect was a dangerous drug user and an associate of users of narcotics. *State v. Troglia*, 157 M 22, 482 P 2d 143.

Stolen property in plain sight which is discovered by police during lawful impounding of vehicle may be used as basis of probable cause for issuance of search warrant, even though defendant was not in vehicle at time of arrest but vehicle was later found near scene of arrest. *State ex rel. Wilson v. District Court*, 159 M 439, 498 P 2d 1217.

Application for search warrant was defective under this section, notwithstanding it informed issuing justice of criminal activity in certain room in house, since only connection between defendant and activity described was that he had

a room in such house. *State ex rel. Garrius v. Wilson*, — M —, 511 P 2d 15.

Affidavit for search warrant, based on statements of anonymous informer, which did not establish the credibility of the informer, but was verified by two other sources of information, established sufficient probable cause for issuance of the search warrant. *State v. Paschke*, — M —, 527 P 2d 569.

Statement in affidavit that a source of known reliability had told police that defendant would be traveling with cocaine and other drugs in his possession was not sufficient to establish probable cause, since the magistrate must be informed of some of the underlying circumstances from which the officer could conclude that the testimony of the anonymous informant was credible and his information reliable. *State v. Thorsness*, — M —, 528 P 2d 692.

Sufficient Credibility

Affidavit of police officer, who had acquired information from military investigator, who had acquired his information from a known and reliable informer, was of sufficient credibility to constitute probable cause for a search warrant. *Longworth v. District Court*, — M —, 530 P 2d 462.

Sufficient Description of Premises To Be Searched

Search warrant which described the premises to be searched as "two cabins located near the Duck Creek 'Y', near west Yellowstone, Montana, near the office building at Koelzer's Duck Creek cabins" was of insufficient particularity where there were three cabins in the area of the office building and where police had good reason to believe that only one of the houses contained controlled substances. *State v. Ballew*, — M —, 516 P 2d 1159.

or materials which may be the fruit of an offense or evidence of an offense," sufficiently described objects to be seized. *State v. Meidinger*, 160 M 310, 502 P 2d 58, distinguished in 516 P 2d 1159.

95-705. Scope of search with warrant.**Description of Place and Property**

Search warrant directing officers to search for "a walkie-talkie, license plates, and there may be fingerprints, letters, papers, burglary tools, and other objects

95-706. Filing of application.**Application Not Filed with Court.**

Where a duplicate of the application for a search warrant was retained by a police detective, the state's argument that there was an agency relationship between the police detective and the police judge

is not valid since, under the doctrine of separation of powers, there can be no agency relationship between the executive and judicial branches of government. *State v. Tropf*, — M —, 530 P 2d 1158.

95-707. By whom served.**General Description of Officer**

A search warrant directed to "any peace officer of this state," was a valid war-

rant. *State v. Meidinger*, 160 M 310, 502 P 2d 58.

95-717. When search and seizure not illegal.**Disclaimer**

Evidence discovered during search of house occupied by defendant's mother was properly admitted on charge of burglary since defendant disclaimed any interest in property recovered from search and had no possessory interest in his mother's home. *State v. Dess*, 154 M 231, 462 P 2d 186.

Infringement of Rights

Notice to the person who is subject to the process, concerning the origin of the process and to whom he may address his grievances, is not a technical irregularity but a matter of substantive due process, and omission or error in the name of the court is an infringement of the rights of such person, and is prejudicial error. *State v. Tropf*, — M —, 530 P 2d 1158.

95-719. Stop and frisk. (1) A peace officer may stop any person he observes in circumstances that give the peace officer reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against the person or theft, damage or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that the peace officer has reasonable cause to suspect has just been committed if:

(a) the peace officer has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that the peace officer has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property; and

(b) the peace officer has reasonable cause to suspect the person committed the felony; and

(c) the stop is reasonably necessary to obtain or verify his identity to determine whether to arrest the person for the felony; or the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

(4) A peace officer who has lawfully stopped a person under this section may:

(a) frisk that person and take other reasonably necessary steps for protection if the peace officer has reasonable cause to suspect that the person is armed and presently dangerous to the peace officer or another person present; and

(b) take possession of any object that the peace officer discovers during the course of the frisk if the peace officer has probable cause to believe the object is a deadly weapon.

(5) A peace officer who has lawfully stopped a person under this section may demand of the person his name and his present or last address.

(6) A peace officer who has lawfully stopped a person under this section shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer and that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(7) After the authorized purpose of the stop has been accomplished or thirty (30) minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973.

CHAPTER 8—THE OFFICE OF THE CORONER

Section

95-803. Coroner to hold inquest—when.

95-802. Coroner to have autopsy—when.

Compiler's Notes

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "Montana state board of health."

95-803. Coroner to hold inquest—when. An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person. The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, when the death of any person occurs in a jail or penal institution, or from the use of a firearm by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest. The coroner shall conduct the inquest with the aid and assistance of the county attorney. For holding such inquest, the coroner must summon a jury of not more than nine (9) persons, qualified by law to serve as jurors. Such inquest is to be held in accordance with sections 95-804 through 95-809 of this chapter.

History: En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975.

Amendments

The 1975 amendment inserted the third sentence.

CHAPTER 9—INITIAL APPEARANCE OF ARRESTED PERSON

95-902. Duty of the court.

Appointment of Counsel

The court's duty cannot end with a mere reading of his rights to the defendant and if defendant requests counsel to be

appointed, the court without unnecessary delay, must determine indigency and appoint counsel accordingly. *Fitzpatrick v. Crist*, — M —, 528 P 2d 1322.

CHAPTER 10—RIGHT TO COUNSEL

Section

95-1005. Remuneration of appointed counsel.

95-1001. Right to counsel.

Attorney's Lien

Court could not summarily impose a lien on defendant's estate in favor of county for services of counsel appointed when it was thought defendant might be indigent. *Petition of Hunsinger*, 153 M 445, 456 P 2d 304.

Effect of Discharge of Counsel

There was no ground for appeal based on inadequate representation where defendant attempted to discharge his appointed counsel one day before trial after counsel had adequately represented defendant for months. *State v. Forsness*, 159 M 105, 495 P 2d 176.

Remarks About Appointment of Council

Testimony of the police officer that the defendant did not want to talk to police but asked to call his lawyer, although irrelevant and improper, was harmless error where the state presented overwhelming evidence of guilt and the defendant himself testified at trial. *State v. Flamm*, — M —, 526 P 2d 119.

Right to Appear and Defend by Counsel

The court must determine indigency and appoint counsel without unnecessary delay; delay of four months in appointment of counsel which seriously prejudiced the preparation of defendant's case did not fulfill the concept of fundamental fairness and due process. *Fitzpatrick v. Crist*, — M —, 528 P 2d 1322.

95-1002. Waiver of counsel.

Waiver of Right to Counsel

Even though appellant was not eighteen years old, but rather seventeen years and eight months old, this section did not apply where defendant had been convicted of robbery, had I.Q. of 122, had

been in trouble with law before, had spent time in state correctional school, had been given three Miranda warnings and had waived his right to counsel. *State v. Braden*, 154 M 90, 460 P 2d 85.

95-1005. Remuneration of appointed counsel. Whenever, in a criminal action or proceeding, an attorney at law represents or defends any person by order of the court, on the ground that the person is financially unable to employ counsel, such attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding. Such costs shall be chargeable to the county in which the proceeding arose, except that (a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal, city or police court wherein costs shall be chargeable to the city or town in which the proceeding arose, and (b) in arrests in criminal proceedings by agents of the department of fish and game and arrests by agents of the department of justice, the costs (including attorneys' fees of attorneys appointed by the court for the defendant) must be borne by the state agency causing the arrest.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973; amd. Sec. 1, Ch. 15, L. 1974.

Amendments

The 1973 amendment added the exception at the end of the second sentence.

The 1974 amendment divided the second sentence into (a) and (b); added the language in subdivision (b); and made minor changes in style and phraseology.

CHAPTER 11—BAIL

95-1108. Bailable offenses.**Presumption of Guilt**

Trial court abused its authority in denying bail to defendant whose conviction for first-degree murder was remanded for new trial where defendant offered evidence of good conduct while in prison, was released on bail for a period of two weeks after the verdict but appeared for sentencing, made proof as to an

amount of bail and its availability, and was not a security risk; presumption of guilt sufficient to deny bail was not established by previous trial transcript where appellate court's opinion did not discuss five issues, one of which was the sufficiency of the evidence. *State v. Campbell*, 160 M 111, 500 P 2d 801.

95-1109. Bail after conviction.**Abuse of Discretion**

Where complete presentence investigation was conducted, trial court did not abuse its discretion by refusing admission to bail pending appeal after defendant was convicted of second-degree murder and sentenced to fifty years in state prison. *State v. Kotarski*, 154 M 309, 462 P 2d 873.

Denial of bail pending determination of appeal subsequent to conviction of second degree murder was not an abuse of the discretion where based on concern for safety of other citizens living in the area. *French v. Crist*, — M —, 518 P 2d 35.

95-1116. Conditions of bail, when performed, etc.**Discharging Forfeiture**

Authority of district court to discharge the forfeiture of bail ceases upon expiration

of the thirty-day limitation period set forth in subsection (c). *State v. Finley*, — M —, 521 P 2d 198.

95-1119. Bail on a new trial.**Reversal of Conviction**

Trial court abused its authority in denying bail to defendant whose conviction for first-degree murder was remanded for a new trial where defendant offered evidence of good conduct while in prison, was released on bail for a period of two weeks after the verdict but appeared for sentencing, made proof as to an amount of

bail and its availability, and was not a security risk; presumption of guilt sufficient to deny bail was not established by previous trial transcript where appellate court's opinion did not discuss five issues, one of which was the sufficiency of the evidence. *State v. Campbell*, 160 M 111, 500 P 2d 801.

CHAPTER 12—PRELIMINARY EXAMINATION

95-1202. Proceedings at the preliminary examination.**Option To Use Information**

Order by justice of peace setting a time and place for preliminary hearing does not prevent prosecution from proceeding instead by information filed under section 95-1301. *State v. Dunn*, 155 M 319, 472 P 2d 288.

Right to Preliminary Hearing

Where supporting affidavit filed under section 95-1301(a) established probable cause to the satisfaction of the district judge, defendant had no right to a preliminary hearing to conduct a "fishing expedition" for pretrial discovery of prosecution's evidence. *State v. Dunn*, 155 M 319, 472 P 2d 288.

DECISIONS UNDER FORMER LAW

Right to Preliminary Hearing

Since in 1960 defendant had no right to preliminary hearing, issue of waiver of such right was irrelevant, as state could

have proceeded against him even had he prevailed at such hearing. *Pine v. Estelle*, 470 F 2d 721.

CHAPTER 13—LEAVE TO FILE INFORMATION AND
TIME FOR FILING INFORMATION**95-1301. Leave to file information.****Bypassing Preliminary Hearing**

Where preliminary hearing was ordered for defendant after an initial appearance before justice of the peace, prosecutor was not precluded thereby from subsequently filing for leave to file an information under this section. *State v. Dunn*, 155 M 319, 472 P 2d 288.

Granting Leave

Where relators were arrested and charged with possession of dangerous drugs, district court did not err in granting leave to file informations against such persons, pursuant to this section, since probable cause existed for arrest of these persons without warrant. *State ex rel. Glantz v. District Court*, 154 M 132, 461 P 2d 193.

Probable Cause

Arrest of defendant in presence of co-defendant at site of one burglary and subsequent discovery in codefendant's automobile of property stolen in another burglary earlier in same evening did not establish probable cause for information against defendant for earlier burglary. *State ex rel. Wilson v. District Court*, 159 M 439, 498 P 2d 1217.

Certified motion for leave to file information, which included four pages of facts discovered during investigation of homicide, together with autopsy report, was adequate to support finding of probable cause that defendant had committed deliberate homicide, aggravated assault, rape, and kidnapping. *State ex rel. McKenzie v. District Court*, — M —, 525 P 2d 1211.

Sufficiency of Facts Alleged

Where evidence in supporting affidavit established probable cause to satisfaction

of district judge, defendant had no right to preliminary hearing to enable him to discover information and knowledge of state's witnesses. *State v. Dunn*, 155 M 319, 472 P 2d 288.

An affidavit is sufficient to establish jurisdiction of the district court if it specifies that the offense was committed within the county even though the county contains an Indian reservation and the affidavit has not negated the possibility that the offense was committed within the reservation. *State ex rel. Bell v. District Court*, 157 M 35, 482 P 2d 557.

An affidavit which does not give specific time and place is insufficient to show probable cause even though it alleges that the defendant committed the offense of rape by intercourse with a female child under eighteen, not his spouse, within the county. *State ex rel. Bell v. District Court*, 157 M 35, 482 P 2d 557.

Supporting Affidavit

There is no requirement under subsection (a) that a supporting affidavit of a witness having direct knowledge of facts sufficient to establish probable cause be filed with the application to file an information. *State v. Dunn*, 155 M 319, 472 P 2d 288.

Absence of supporting affidavit for leave to file information contrary to this section was not fatal error, since it is a procedural matter and does not affect substantial rights of the defendant. *State v. Logan*, 156 M 48, 473 P 2d 833.

In its discretion, district court may require evidence other than affidavit for support before it grants permission for direct filing of information with district court. *State ex rel. Bell v. District Court*, 157 M 35, 482 P 2d 557.

95-1302. Time for filing the information.**New Information Filed**

Where prosecution had dismissed a first information charging receipt of stolen property and filed a new one charging both grand larceny and receipt of stolen property, the second information was timely

with respect to the additional larceny count since the first information had not been amended, but had been dismissed and permission had been granted to file a new information. *State v. Tritz*, — M —, 522 P 2d 603.

95-1303. The county attorney not filing an information.**Sufficiency of Motion to Amend**

Certified motion for leave to file second amended information, which was signed by the county attorney but not supported by separate affidavit, was sufficient by itself as an affidavit within the meaning

of this section, although the better practice would have been to file the motion supported by a separate affidavit. *State ex rel. McKenzie v. District Court*, — M —, 525 P 2d 1211.

CHAPTER 14—GRAND JURY

Section

- 95-1401. Summoning grand juries.
 95-1402. Objections to grand jury and to grand jurors.
 95-1410. Finding and presentment of the indictment.

95-1401. Summoning grand juries. A grand jury must only be drawn and summoned when the district judge in his discretion considers a grand jury necessary and shall so order. The grand jury must consist of eleven (11) persons, of whom eight (8) must concur to find an indictment. The district judge may direct the selection of one (1) or more alternate jurors who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. If a member of the jury becomes unable to perform his duty he may be replaced by an alternate. The composition and drawing of a grand jury shall be in accordance with the provisions of sections 93-1801 to 93-1804.

History: En. 95-1401 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 3, L. 1973.

Amendments

The 1973 amendment increased the grand jury from seven to eleven persons; and increased the number of votes required to find an indictment from five to eight.

Discretion of Court

Although judicial authority is discretionary, it is not absolute, unbridled dis-

cretion; and where two judges, having before them an application to convene a grand jury, signed by the attorney general reciting alleged criminal activity, and alleging the inability to achieve investigatory conclusion without impaneling a grand jury, have denied such application for reasons which are erroneous as a matter of law, there has been an abuse of discretion. *State ex rel. Woodahl v. District Court*, — M —, 530 P 2d 780.

95-1402. Objections to grand jury and to grand jurors. (a) * * *
 [Same as parent volume.]

(b) **Motion to Dismiss.** A motion to dismiss the indictment may be based on the grounds that the grand jury was not selected, drawn or summoned according to law, or that an individual juror was not legally qualified. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section 95-1403 of this code that eight (8) or more jurors after deducting those not legally qualified, concurred in finding the indictment.

History: En. 95-1402 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 3, L. 1973.

ber of jurors specified in the latter part of the second sentence of subdivision (b) from five to eight.

Amendments

The 1973 amendment increased the num-

95-1410. Finding and presentment of the indictment. (a) An indictment cannot be found without the concurrence of at least eight (8) grand jurors. When so found it must be endorsed, "a true bill," and the endorsement must be signed by the foreman of the grand jury.

(b) **Indictment. How Presented and Filed:**

(1) and (2). * * * [Same as parent volume.]

(c) If the defendant is in custody or has given bail and eight (8) jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

(d). * * * [Same as parent volume.]

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973.

ber of grand jurors specified in the first sentence of subdivision (a) and in subdivision (c) from five to eight.

Amendments

The 1973 amendment increased the num-

CHAPTER 15—CHARGING AN OFFENSE

Section

95-1504. Joinder and discharge of offenses and defendants.

95-1507. Sentence of imprisonment for persistent felony offender.

95-1503. Form of charge.**Sufficiency of Charge**

Information charging drug offense was insufficient where it contained neither identity of informer nor specific facts concerning the offense and identity of time and place to protect accused from double jeopardy. State ex rel. Offerdahl v. District Court, 156 M 432, 481 P 2d 338.

Sufficiency of Charge—Unlawful Sale of Drug

Information charging defendant with violation of section 54-132 for sale of dangerous drugs was sufficient even though failing to conform with specific requirements of this section, since defendant was apprised of the charges against him. State v. Dunn, 155 M 319, 472 P 2d 288.

DECISIONS UNDER FORMER LAW

Proof as to Time of Offense

Unless time was a material ingredient in the offense or in charging the same, it was only necessary to prove that it was com-

mited prior to the findings or filing of the information or indictment. State v. Rogers, 31 M 1, 4, 77 P 293.

95-1504. (11974, 11975) Joinder and discharge of offenses and defendants. (a) to (c). * * * [Same as parent volume.]

(d) When two or more persons are included in the same charge, the court may, at any time, before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged, that he may be a witness for the state.

(e) When two or more persons are included in the same indictment or information, and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his codefendant.

History: Subsections (a) to (c): en. 95-1504 by Sec. 1, Ch. 196, L. 1967.

Subsections (d) and (e): en. Sec. 187, p. 245, Bannack Stat.; re-en. Sec. 308, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Rev. Stat. 1879; re-en. Sec. 309, 3d Div. Comp. Stat. 1887; amd. Secs. 2075, 2076, Pen. C. 1895; re-en. Secs. 9276, 9277, Rev. C. 1907; re-en. Secs. 11974, 11975, R. C. M. 1921; Secs. 94-7206, 94-7207, R. C. M. 1947; redes. 95-1504 (d) and (e) by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Secs. 1099, 1100.

Ch. 513, Laws of 1973, renumbered them to appear in this section.

Multiple Offenses

Upon allegation of assault and battery, rape, kidnaping, and homicide, all arising from the same transaction, the prosecution is bound to prosecute them all at one time, in so far as possible, even though the court may be required to limit the number of verdicts the jury may return. State ex rel. McKenzie v. District Court, — M —, 525 P 2d 1211.

"Same Class of Crimes"

Grand larceny and receipt of stolen property are in "same class of crimes"

Compiler's Notes

Subsections (d) and (e) were originally numbered 94-7206 and 94-7207. Section 29,

within subsection (a); state could charge the two offenses alternatively in the same information and was not required to elect between them. *State v. Tritz*, — M —, 522 P 2d 603.

Severance of Issues of Guilt and Sanity

Denial of defendant's motion for severance for trial of issues of defendant's guilt or innocence and his sanity was proper since sections 95-507 and 95-508 provide for those matters to be presented at same trial and to same jury. *State v. Olson*, 156 M 339, 480 P 2d 822.

95-1505. Amending the charge.

Amendment Denied

Motion to amend date of information and to amend charge from preparation of drugs to sale of drugs, made after defendant pleaded not guilty and entered notice

of alibi defense, was properly denied since amendments would destroy defense and charge a different offense. *State v. Tropf*, — M —, 530 P 2d 1158.

DECISIONS UNDER FORMER LAW

Amendment of Information

Allowing prosecution to amend charges in information from first degree burglary to burglary on motion presented on day

of trial was not error since elements of crime and proof required for conviction remained the same. *State v. Stewart*, — M —, 507 P 2d 1050.

95-1506. Prior conviction.

Constitutionality

Subsection (d) of this section does not unconstitutionally deprive accused of right to jury trial. *Newman v. Estelle*, 156 M 502, 484 P 2d 276, certiorari denied 404 US 966, 92 S Ct 341.

in his own behalf. *State v. Romero*, 161 M 333, 505 P 2d 1207.

Notice

Where state, pursuant to this section, gave proper notice to defendant of its intention to seek increased punishment if defendant was convicted on charge of rape, on basis of defendant's prior conviction of felony, there was no error since jury was not in possession of such information. *State v. Metcalf*, 153 M 369, 457 P 2d 453.

Cross-Examination of Defendant

Even though prosecutor gave notice under this section, defendant was not entitled to enjoin prosecutor from cross-examining defendant on prior convictions in the absence of a showing of prejudice from cross-examination, and defendant was not prejudiced by his failure to testify after injunction was denied. *State v. Lewis*, 157 M 452, 486 P 2d 863.

Sufficiency of Evidence

Mere showing that defendant's name is similar to name of person on charge sheet showing alleged prior offense is not sufficient to authorize enhanced sentence; there must be competent proof that defendant is same person as one named on charge sheet; failure to produce such proof does not invalidate conviction, only sentence. *State v. Cooper*, 158 M 102, 489 P 2d 99.

Impeachment

Subsection (b) of this section does not change any law relative to informing the jury of a defendant's prior record for impeachment purposes; a prior record of the defendant may still be used to impeach his testimony should he decide to testify

95-1507. Sentence of imprisonment for persistent felony offender. (1)

A persistent felony offender is an offender who has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first.

(2) A persistent felony offender shall be imprisoned in the state prison for a term of not less than five (5) years nor more than one hundred (100) years providing:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of one (1) year could have been imposed; and

(b) less than five (5) years have elapsed between the commission of the present offense and either,

(i) the previous felony conviction or

(ii) the offenders released on parole or otherwise from a prison or other commitment imposed as a result of the previous felony conviction; and

(c) the offender was more than twenty-one (21) years old at the time of the commission of the new offense.

(3) A previous felony conviction shall not be considered for the purpose of sentencing under this section if the offender has been pardoned on the grounds of innocence, or if the conviction had been set aside in any post-conviction hearing.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973.

DECISIONS UNDER FORMER LAW

Harmless Admission

Where defendant's prior conviction of felony was not charged during trial but was admitted by the defendant in his testimony, such admission was not prejudicial since the sentence he finally received was less than he would have received under the second offense statute. *Petition of Gallagher*, 153 M 440, 456 P 2d 306.

Void Conviction

Where prior felony conviction was void because of denial of due process during arraignment, it was improper to sentence a defendant under second offense statute. *Lewis v. State*, 153 M 460, 457 P 2d 765.

CHAPTER 16—ARRAIGNMENT OF DEFENDANT

95-1606. Procedure on arraignment.

Conditional Pleas Not Authorized

A plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violations of constitutional rights made prior to the plea. *State v. Turcotte*, — M —, 524 P 2d 787.

Withdrawal of Guilty Plea

Defendant who pleaded guilty to a

lesser offense after the jury was seated, but prior to the calling of any witnesses, and then two months later withdrew his guilty plea, was properly re-charged with the original greater offense without violation of his protection against double jeopardy, since jeopardy does not attach in Montana until after the first witness is sworn. *State v. Cunningham*, — M —, 535 P 2d 186.

95-1608. Irregularity of arraignment.

Failure to File Affidavit

Failure of county attorney to support request for direct information with accompanying affidavit contrary to section 95-

1301 was a procedural matter that did not affect substantial rights of the defendant. *State v. Logan*, 156 M 48, 473 P 2d 833.

CHAPTER 17—PRETRIAL MOTIONS

Section

95-1703. Dismissal on motion of court or application of attorney prosecuting.
95-1711. Effect of former prosecution and multiple prosecutions.

95-1701. Defenses and objections which may be raised before trial.**Entrapment**

Testimony that police informant bought defendant two drinks, inquired if defendant knew where informant could buy narcotics and thereafter followed defendant's lead to a house where informant was able to purchase LSD did not estab-

lish entrapment as a matter of law; casual offer to buy unaccompanied by pleading, begging or coercing of the accused does not constitute entrapment. State ex rel. Hamlin v. District Court, First Judicial Dist., Lewis and Clark County, — M —, 515 P 2d 74.

95-1702. Defenses and objections which must be raised before trial.**Delay of Sixteen Months Not Prejudicial**

Even though the house had been razed one year after the fire, delay of sixteen months in the filing of arson charge, due to misplacement of evidence samples by the prosecution, was not prejudicial to defendant, since the laboratory samples of incriminating evidence were still intact, sealed, and capable of examination, and could have been examined by defendant's

chemist. State v. Burchett, — M —, 530 P 2d 471.

Waiver

Failure to object in trial court that application for permission to file an information was not accompanied by supporting affidavit contrary to section 95-1301 waived the objection. State v. Logan, 156 M 48, 473 P 2d 833.

95-1703. Dismissal on motion of court or application of attorney prosecuting. (1) The court may, either on its own motion or upon the application of the attorney prosecuting, and in furtherance of justice, order an action, complaint, information, or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

If a defendant, after entry of plea upon a complaint, information, or indictment charging a misdemeanor, whose trial has not been postponed upon his application, is not brought to trial within six months.

(3) An order for the dismissal of an action, as provided in this chapter, is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

History En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971.

Amendments

The 1971 amendment designated the former provisions as subsection (1) and added subsections (2) and (3).

95-1708. Motion for continuance.**Absence of Witnesses**

Trial court did not abuse its discretion in denying continuance to allow defendants time to locate two missing witnesses where defendants' counsel had no knowledge of the whereabouts of the missing witnesses and no showing was made that the testimony of the two witnesses would help the defense. State v. DiGiallonardo, 160 M 379, 503 P 2d 43.

Substitution of Counsel

Denial of motion for continuance based on substitution of counsel was not an abuse of discretion or a denial of defendants' constitutional right to counsel where defendants had refused for three months to communicate with court-appointed counsel and first attempted to obtain alternate counsel on the day before trial. State v. Spurlock, 161 M 388, 506 P 2d 842.

95-1709. Substitution of judge.**Justice of the Peace Courts**

Since, by virtue of section 95-2009, a defendant tried in a justice of the peace

court is provided with the right to a trial de novo, the word "judge" in section 95-1709 does not include "justice of the

peace" and a justice of the peace may not be disqualified on a simple affidavit for substitution of judge under section 95-1709, rather the provisions of chapter 95-20 must be followed. *Bailey v. State*, — M —, 517 P 2d 708.

Substitution for Cause

Denial of motion for substitution of judge for cause under subsection (b) was not an abuse of discretion or a denial of due process in view of record and absent a showing of prejudice despite fact that defendant had been tried before same judge previously and that a dispute between the defendant and the judge had occurred at that trial over credit for jail time; subject judge's holding of the hear-

ing on his own prejudice, prior sentencing of the defendant and denial of recess to allow counsel for defendant to commence an original proceeding in supreme court were not indications of an abuse of discretion. *State v. Parker*, 161 M 394, 506 P 2d 850.

Timely Motion

Affidavits of disqualification filed only four days before scheduled trial date were properly denied where affiants made no showing that there should be a variance or justification for failure to file the affidavit fifteen days prior to trial as provided by statute. *State ex rel. Paschke v. District Court, Thirteenth Judicial Dist.*, — M —, 514 P 2d 590.

95-1710. Change of place of trial.

Justice of the Peace Courts

Since, by virtue of section 95-2009, a defendant tried in a justice of the peace court is provided with the right to a trial de novo, the word "judge" in section 95-1709 does not include "justice of the

peace" and a justice of the peace may not be disqualified on a simple affidavit for substitution of judge under section 95-1709, rather the provisions of chapter 95-20 must be followed. *Bailey v. State*, — M —, 517 P 2d 708.

95-1711. Effect of former prosecution and multiple prosecutions. (1) Definitions of terms.

(a) The term "same transaction" includes conduct consisting of:

(i) a series of acts or omissions motivated by a purpose to accomplish a criminal objective, and necessary or incidental to the accomplishment of that objective; or

(ii) a series of acts or omissions motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or the same persons or the property thereof.

(b) An offense is an "included offense" when:

(i) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(ii) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(iii) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(2) Method of prosecution when conduct constitutes more than one offense. When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other; or

(b) one offense consists only of a conspiracy or other form of preparation to commit the other; or

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, and unless the law provides that the specific periods of such conduct constitute separate offenses.

(3) When prosecution barred by former prosecution. Provided the offenses, if more than one, were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge, and provided the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside is an acquittal of the greater inclusive offense that was charged.

(b) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge, after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in:

(i) a judgment of conviction which has not been reversed or vacated; or

(ii) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(iii) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(i) the defendant consents to the termination or waives his right to object to the termination; or

(ii) the trial court, in the exercise of its discretion, finds that the termination is necessary because:

(A) it is physically impossible to proceed with the trial in conformity with law; or

(B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or

(C) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state; or

(D) the jury is unable to agree upon a verdict; or

(E) false statements of a juror on voir dire prevent a fair trial.

(4) Former prosecution in another jurisdiction—when a bar. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate and/or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(a) The first prosecution resulted in an acquittal or in a conviction as defined in subsection (3) and the subsequent prosecution is based on an offense arising out of the same transaction.

(b) The former prosecution was terminated, after the complaint has been filed on a misdemeanor charge, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

(5) Former prosecution before court lacking jurisdiction or when fraudulently procured by the defendant. A prosecution is not a bar within the meaning of subsections (3) and (4) under any of the following circumstances:

(a) the former prosecution was before a court which lacked jurisdiction over the defendant or the offense; or

(b) the former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed; or

(c) the former prosecution resulted in a judgment of conviction which was held invalid in any post-conviction hearing.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973.

Multiple Offenses

Upon allegation of assault and battery, rape, kidnaping, and homicide, all arising from the same transaction, the prosecution

is bound to prosecute them all at one time, in so far as possible, even though the court may be required to limit the number of verdicts the jury may return. *State ex rel. McKenzie v. District Court*, — M —, 525 P 2d 1211.

DECISIONS UNDER FORMER LAW

Constitutionality

Although the point at which jeopardy attached in Montana was slightly different from the point at which jeopardy attached under federal law, Montana statute providing that jeopardy attached after first witness was sworn did not violate United States constitutional standards of

double jeopardy. *State v. Cunningham*, — M —, 535 P 2d 186.

Same Transaction

Information that did not particularize the charge against defendant was not factually defective, since prosecution for same transaction that resulted in earlier con-

viction is expressly barred. *State v. Dunn*, 155 M 319, 472 P 2d 288.

Defendant's conviction of driving while intoxicated and operating a motor vehicle

with improper brakes did not bar a subsequent prosecution for involuntary manslaughter. *State v. McDonald*, 158 M 307, 491 P 2d 711.

CHAPTER 18—PRODUCTION AND SUPPRESSION OF EVIDENCE

Section

95-1807. Compelling testimony: immunity from prosecution.

95-1808. "Witness" and "state" defined.

95-1809 to 95-1812. [Transferred from Title 94.]

95-1801. Subpoenas.

Power to Subpoena

A subpoena must be issued by a court and is not available to the attorney general or other prosecuting attorneys inde-

pendent of a court or a grand jury. *State ex rel. Woodahl v. District Court*, — M —, 530 P 2d 780.

95-1802. Depositions.

Admissibility in Evidence

In rape case, testimony of witness given at preliminary hearing in defendant's presence, where witness had been cross-examined by defendant's counsel, and where testimony had been recorded and transcribed by court reporter, was expressly admissible in evidence under this section where proper foundation had been laid first by showing that witness could not be located for trial. *State v. Bouldin*, 153 M 276, 456 P 2d 830.

was error where no subpoena had been issued for purchasers and they had appeared in state to testify at another trial six days after conclusion of accused's trial. *State v. LaCario*, — M —, 518 P 2d 982.

Availability of Witness

Allowing testimony of purchasers in drug case to be presented by deposition

Unwillingness of Witness

Affidavit showing that witness had not answered defendant's mailed request to contact attorney to arrange for interview did not sufficiently establish witness's unwillingness to provide information so as to require a court-ordered deposition. *State v. Dunn*, 155 M 319, 472 P 2d 288.

95-1803. Discovery, inspection, and notice.

Constitutionality

While this section may be unconstitutional as applied, it is constitutional on its face and not repugnant to 4th, 5th, 6th, and 14th Amendments of constitution of United States. *State ex rel. Sikora v. District Court*, 154 M 241, 462 P 2d 897.

Defendant's rights under fifth, sixth and fourteenth amendments of the United States Constitution were not violated by operation of subsection (d) of this section where neither defendant's witness list nor his notice of insanity and self-defense was used to make a prima facie case against him. *Radford v. Stewart*, 320 F Supp 826, affirmed in 472 F 2d 1161.

Amendment After Notice of Alibi

Motion to amend date of information made after defendant pleaded not guilty and entered notice of alibi defense was properly denied, since it would destroy the defense and be a substantial prejudice to the rights of the defendant. *State v. Tropf*, — M —, 530 P 2d 1158.

Amendment of Witness List

Allowing amendment of witness list to include victim of crime was not an abuse of discretion on the part of trial judge. *State v. Campbell*, 160 M 111, 500 P 2d 801.

Defenses of Insanity and Self-Defense

This section, as it relates to defenses of insanity and self-defense, is to be interpreted as directory only. *State ex rel. Sikora v. District Court*, 154 M 241, 462 P 2d 897.

There was no reversible error in making defendant comply with insanity and self-defense notice provisions of subd. (d) of this section, where state court had already decided that section required reciprocal duties of prosecution, state operated in good faith at trial, and facts otherwise revealed no prejudice to defendant. *Radford v. Stewart*, 472 F 2d 1161.

Failure To File Notice of Defense

Trial judge might allow psychiatric proof even though motion was untimely

but, where defendant's counsel did not comply with court order to submit all motions of defense at time of pleading to information or during six-month delay in going to trial, trial court properly denied defendant's notice of intention to rely on mental disease or defect under subsection (d) of this section as not being timely filed. *State v. Bentley*, 155 M 383, 472 P 2d 864.

Harmless Error

Defendant was not prejudiced by prosecution's citation of section 94-8904, which had been repealed and replaced by this section, in adding witnesses; this section was a continuation of section 94-8904. *State v. Rozzell*, 157 M 443, 486 P 2d 877.

95-1804. Motion to produce confession or admission.

List of Witnesses

In the absence of surprise, testimony concerning defendant's oral admission of guilt was properly admitted even though

state had not supplied the names of witnesses to the admission. *State v. Dunn*, 155 M 319, 472 P 2d 288.

95-1805. Motion to suppress confession or admission.

Test of Voluntariness

In the absence of evidence of physical or psychological coercion, the defendant's handwritten confession, made about two hours after the crime was reported, and after defendant had been informed of his rights, was voluntarily given, and admissible at trial. *State v. Smith*, — M —, 523 P 2d 1395.

Voluntary Waiver of Rights

Although the finding of the trial court

will not be reversed unless clearly against the weight of evidence, where testimony of the defendant as to whether he had been informed of his rights was contradictory and self-impeaching and there was testimony from three police officers that he had, in fact, been informed of his rights, there was not sufficient credible testimony to support the finding of the trial court that the defendant did not effectively waive his rights. *State v. Smith*, — M —, 523 P 2d 1395.

95-1806. Motion to suppress evidence illegally seized.

Admissibility of Suppressed Evidence in Proceedings Other Than Trial

Evidence of drugs seized in a search conducted under a defective warrant, although not admissible in any prosecution for possession of the drugs, may properly be considered in revoking a previously deferred sentence. *State v. Thorsness*, — M —, 528 P 2d 692.

Hearing

"Hearing" contemplated by this section is full judicial hearing with record made; no "hearing" was held where only record was clerk's docket entry, notwithstanding court's later statement that both parties had agreed to proceed without court reporter. *State v. Feters*, — M —, 510 P 2d 1.

Searches by Private Citizens

The exclusionary rule for suppression of evidence must also apply to searches by private citizens such as security guards,

private detectives or political investigators, or any citizen who conducts an unreasonable search or illegal intrusion into the privacy of another. *State v. Coburn*, — M —, 530 P 2d 442.

Timeliness of Motion

Where confusion between the parties and the district court over state intention to drop or continue prosecution after defendant's conviction on assault charge caused delay in defendant's filing motion to suppress illegally seized evidence until three days before trial, the motion was neither improper, nor did the fact that it was untimely constitute a waiver under the circumstances. *State v. Bentley*, 156 M 129, 477 P 2d 345.

Defendant's failure to make timely motion to suppress evidence waived search and seizure issue for appeal, notwithstanding his objection to introduction of evidence seized. *State v. Gallagher*, — M —, 509 P 2d 852.

95-1807. Compelling testimony: immunity from prosecution. Before or during trial in any judicial proceeding a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or

produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence, in accordance with this section, in any investigation or proceeding he cannot be prosecuted or subjected to any penalty or forfeiture, other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter or thing concerning which he testified or produced evidence.

History: En. 95-1807 by Sec. 7, Ch. 513, L. 1973.

95-1808. "Witness" and "state" defined. "Witness" as used in 95-1809 through 95-1811, R. C. M. 1947, shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. The word "state" shall include any territory of the United States and District of Columbia.

History: En. 95-1808 by Sec. 8, Ch. 513, L. 1973.

95-1809 to 95-1812. [Transferred from Title 94.]

Compiler's Notes	New Sec.	Vol. 8
These sections were originally numbered 94-9002 to 94-9004 and 94-701-1. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:	95-1809	94-9002
	95-1810	94-9003
	95-1811	94-9004
	95-1812	94-701-1

CHAPTER 19—TRIAL IN DISTRICT COURT

Section	
95-1901.	Method of trial.
95-1909.	Trial jurors.
95-1910.	Order of trial.
95-1915.	Verdict.

95-1901. Method of trial. (a). * * * [Same as parent volume.]

(b) Questions of law shall be decided by the court and questions of fact by the jury except on a trial for libel the jury shall determine both questions of law and of fact. Questions of law and fact shall be decided by the court when a trial by jury is waived under subsection (d) of this section.

(c) Defendants in all criminal cases shall have a right to trial by jury not to exceed twelve (12) in number. The parties may agree in writing, at any time before the verdict, with the approval of the court that the jury shall consist of any number less than twelve (12).

(d) Upon written consent of the parties a trial by jury may be waived.

(e) The plea of not guilty puts in issue every material allegation of the indictment, information or complaint.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973.

Amendments

The 1973 amendment added the second sentence to subdivision (b); deleted "How-

ever, if no capital offense is involved" at the beginning of the second sentence of subdivision (c); inserted a new subdivision (d); and redesignated former subdivision (d) as subdivision (e); and made a minor change in style.

Instructions

Under subsection (b), trial court was bound to instruct the jury on manslaughter despite fact that the court may have considered the evidence in support of manslaughter weak and inconclusive

since the weight to be given the evidence was a question for the jury. *State v. Taylor*, — M —, 515 P 2d 695.

Testimony by Accused

Defendant who voluntarily testified that he had shot the victim (but only in self-defense) could not, on appeal, argue that he had been compelled to testify in order to correct errors presented by the prosecution. *State v. Grady*, — M —, 531 P 2d 681.

95-1902. Plea of guilty.

Voluntariness of Guilty Plea

Although examination by the court as to the voluntariness of a guilty plea is desirable and in some cases mandatory, where consideration of the entire record, including arraignment, participation of defendant pro se throughout two years of defense tactics, and discharge of counsel with repeated references to plea bargaining each time it appeared the case would

be brought on for trial, indicated that defendant's guilty plea was entered voluntarily with full understanding of the charge, and with full appreciation of constitutional rights and possible penalty, the fact that the court did not specifically question defendant at the time of the plea change did not amount to reversible error. *State v. Griffin*, — M —, 535 P 2d 498.

95-1904. Presence of defendant—mistrial for absence.

Conclusive Presumptions

Under this section there is conclusive presumption that defendant was present

at all stages of proceeding unless record affirmatively shows the contrary. *Petition of Eldiwitw*, 153 M 468, 457 P 2d 909.

95-1906. Order of prosecutions.

Prejudicial Delay

Rights of accused convict, who was held in maximum security without counsel for a period of four months, and whose trial was held seven months after his motion for a speedy trial (during which time

many of his witnesses disappeared) were severely prejudiced, and upon appeal the conviction and sentence were vacated with prejudice. *Fitzpatrick v. Crist*, — M —, 528 P 2d 1322.

95-1909. Trial jurors. (a) to (e) * * * [Same as parent volume.]

(f) Each defendant shall be allowed eight (8) peremptory challenges in capital cases, six (6) in all other cases tried in the district court before a twelve (12) person jury, and three (3) in all cases tried in justice of the peace or police courts. However, there may not be additional challenges for separate counts charged in the indictment or information. If the indictment or information charges a capital offense, as well as lesser offenses in separate counts, the maximum number of challenges shall be eight (8). The state shall be allowed the same number of peremptory challenges as all of the defendants. In a civil or criminal case tried in the district court before a six (6) person jury, the state and all the defendants shall be allowed three (3) peremptory challenges each.

(g) to (i) * * * [Same as parent volume.]

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974.

Amendments

The 1974 amendment inserted "before

a twelve (12) person jury" after "the district court" in the first sentence of subsection (f) and added the final sentence in subsection (f).

Motion for Acquittal

Court properly denied defendant's motion for acquittal for failure of state to present sufficient evidence, where defendant admitted shooting victim, and wit-

nesses testified that defendant, after quarreling with victim, had driven home to get a gun in order to accomplish the slaying. *State v. French*, — M —, 531 P 2d 373.

95-1910. Order of trial. (a) to (e) * * * [Same as parent volume.]

(f) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge or jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case.

History: En. 95-1910 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 420, L. 1975.

appeal. *State v. Best*, 161 M 20, 503 P 2d 997.

Amendments

The 1975 amendment inserted "or jury" after "judge" in the last sentence of subsection (f).

Admission of Testimony

Where defendant was charged with commission of lewd and lascivious acts upon female under sixteen years of age, admission of testimony from twelve other witnesses concerning other such improper actions before proof of corpus delicti, although possibly technical error under this section, was cured by later permitting prosecuting witness to take stand. *State v. Jensen*, 153 M 233, 455 P 2d 631.

Instructions—Duty to Object and Point Out Error

Where defendants simply objected to instruction without assigning any grounds, either general or particular, the objection was equivalent to no objection at all, and the instruction was not reviewable on

Opening Statement of Defense

Denial to defendant of opportunity to make opening statement concerning insanity defense until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. *State v. Olson*, 156 M 339, 480 P 2d 822.

Opening Statement—Prosecution

Prosecutor's opening statement, naming items of evidence which were later ruled inadmissible, did not constitute prejudicial error. *State v. Kolstad*, — M —, 531 P 2d 1346.

Rebuttal Testimony

There was no abuse of discretion in permitting rebuttal testimony after determining in chambers that it would not be a repeat of earlier testimony and thus would not place undue emphasis on any prior testimony. *State v. Flamm*, — M —, 526 P 2d 119.

95-1911. When order of trial may be departed from.**Opening Statement of Defense**

Denial to defendant of opportunity to make opening statement concerning insanity defense until after presentation of

prosecution's case was improper interference with defendant's right to have jury consider his defense. *State v. Olson*, 156 M 339, 480 P 2d 822.

95-1913. Conduct of jury after submission of case.**Experimenting with Exhibit**

The jury may have the privilege of examining a dangerous instrument provided they do not use it in any different manner than that involved in the testimony, and that no new fact is discovered from their experiment which is hurtful to the defendant; thus, where there was conflicting testimony as to whether the victim was shot during a struggle or from

a distance, the jury were properly permitted to experiment with revolver in the presence of the court to test the credibility of the testimony. *State v. Thompson*, — M —, 524 P 2d 1115.

Refusal of Further Instructions

Where attorneys objected to the answering of written questions submitted by jury after retirement, the court properly

informed the jury that the answers to the questions were contained in the instructions previously given and that the

court could make no further instructions. State v. Hawkins, — M —, 529 P 2d 1377.

95-1915. Verdict. (a) Return. The verdict shall be unanimous in all criminal actions. Such verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(b) to (d). * * * [Same as parent volume.]

History: En. 95-1915 by Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973.

imous in all criminal actions" at the end of the first sentence of subdivision (a) for "unanimous in all felonies and two-thirds (2/3) in all misdemeanors and appeals from justice or police courts."

Amendments

The 1973 amendment substituted "unan-

CHAPTER 20—JUSTICE AND POLICE COURT PROCEEDINGS

Section

95-2003. Change of place of trial.

95-2005. Formation of trial jury.

95-2006. Verdict.

95-2007. Sentence and judgment.

95-2010. Disqualification of justice, magistrate, or justice of the peace.

95-2003. Change of place of trial. (a) The defendant or prosecution, before trial, may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county.

(b) * * * [Same as parent volume.]

(c) If the court determines that there exists in the county where the prosecution is pending such prejudice that a fair trial cannot be had it shall transfer the cause to any other court of competent jurisdiction in any county where a fair trial may be had.

History: En. 95-2003 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 420, L. 1975.

Amendments

The 1975 amendment substituted "county" for "township" throughout the section.

95-2005. Formation of trial jury. (a) Number of Jurors. A jury in justice or police court shall consist of six (6) persons, but the parties may agree to a number less than six (6).

(b) Formation of Trial Jury. The county jury commission, at the time of preparing the district court jury list, shall prepare a jury list for each justice and police court within the county. Each list shall consist of residents of the appropriate county, city or town. Such list shall be selected in any reasonable manner which shall ensure fairness, and it shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The list shall be filed in the office of the clerk of the district court and the appropriate list shall be posted in a public place in each such county, city or town, and such list shall comprise the trial jury list for the ensuing year for such county, city or town.

Trial jurors shall be summoned from the jury list by notifying each orally that he is summoned and of the time and place at which his attendance is required.

The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney or the prosecuting attorney if the court believes such examination to be improper.

Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in section 95-1909 (d) (2) of this code. Each defendant shall be allowed three (3) peremptory challenges and the state shall be allowed the same number of peremptory challenges as all of the defendants.

History: En. 95-2005 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 420, L. 1975.

ty" for "township" throughout subsection (b).

Repealing Clause

Section 21 of Ch. 420, Laws 1975 read: "Sections 93-6802, 93-6804, 93-6807 and 93-6808, R. C. M. 1947, are repealed."

Amendments

The 1975 amendment substituted "coun-

95-2006. Verdict. (a) Return. The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter, or cause it to be entered in the minutes. The verdict of the jury must be unanimous.

(b) Several defendants. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

(c) Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) Discharge of jury. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

History: En. 95-2006 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 4, L. 1973; en. 95-2006 by Sec. 30, Ch. 513, L. 1973.

Compiler's Notes

Chapter 513 repealed former section 95-2006, effective January 1, 1974 and enacted a new section which, except for an insignificant variation, is identical to the section as amended by Ch. 4, Laws of 1973.

Amendments

Chapter 4, Laws of 1973, substituted the third sentence of subdivision (a) for a sentence reading "Two-thirds (2/3) in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all jurors had concurred therein"; and substituted "unanimous concurrence" in the second sentence of subdivision (c) for "a two-thirds (2/3) concurrence."

95-2007. Sentence and judgment. (a) and (b). * * * [Same as parent volume.]

(c) If the defendant pleads guilty, or is convicted either by the court or by a jury, the court must impose a sentence of fine or imprisonment or

both, as the case may be. The court may suspend the execution of the sentence up to the maximum sentence allowed for the particular offense. The court may impose any reasonable conditions or restrictions on the sentence which it deems necessary. If alcohol or other drugs are involved the court may impose such rehabilitative measures as it deems advisable under the circumstances.

(d). * * * [Same as parent volume.]

History: En. 95-2007 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 348, L. 1973.

Amendments

The 1973 amendment added the second, third and fourth sentences to subsection (c).

95-2009. Appeal.

Increased Sentence

District court may increase sentence or punishment imposed by justice of peace after trial de novo on misdemeanor charge. *State v. Fissette*, 159 M 501, 498 P 2d 1208, following *Colten v. Kentucky*, 405 US 104, 32 L Ed 2d 584, 92 S Ct 1953.

speedy and adequate remedy at law, mandamus did not lie to compel justice of the peace to honor affidavit of disqualification. *Bailey v. State*, — M —, 517 P 2d 708.

Interlocutory Orders

Viewing this act as a whole, it is clear that state may appeal from interlocutory orders; this section was meant only to define and delimit the defendant's right to appeal. *State v. Bergum*, — M —, 520 P 2d 653.

Necessity of Posting Bond

An appeal from the justice court to the district court is perfected when the defendant has posted the required bond in addition to other requirements; defendant's appeal from district court conviction of assault in the third degree was dismissed by virtue of defendant's failure to post bond requested by justice of the peace. *State v. Bush*, — M —, 518 P 2d 1406.

Mandamus

Since this section provides a plain,

95-2010. Disqualification of justice, magistrate, or justice of the peace.

(1) The defendant or the prosecution may move the court in writing for the disqualification of a justice, magistrate, or justice of the peace on the ground that he cannot have a fair and impartial hearing or trial before the justice, magistrate, or justice of the peace. The motion shall be made at least fifteen (15) days prior to the trial of the case, or any retrial thereof after appeal, except for good cause shown. Upon the filing of such a motion the justice, magistrate, or justice of the peace against whom the motion is filed shall be without authority to act further in the criminal action, motion or proceeding but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or proceeding to some other court, nor to the power of calling in another justice, magistrate, or justice of the peace to sit and act in such criminal action or proceeding, providing that no justice, magistrate, or justice of the peace shall so arrange the calendar as to defeat the purposes of this section. Not more than one (1) justice, magistrate, or justice of the peace can be disqualified in the criminal action or proceeding, at the instance of the prosecution and not more than one (1) justice, magistrate, or justice of the peace at the instance of the defendant or defendants.

If either party in any matter above-mentioned shall file the motion as herein provided such party may not complain of any reasonable delay as the result thereof.

The provision of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

(2) In addition to the provision of subsection (1) any defendant may move at any time for the disqualification of a justice, magistrate, or justice of the peace for cause, supported by affidavit. Upon the filing of such motion the court shall conduct a hearing and determine the merits of the motion.

History: En. 95-2010 by Sec. 1, Ch. 281, L. 1975.

qualification of justices, magistrates, and justices of the peace; amending section 93-901, R. C. M. 1947.

Title of Act

An act providing procedures for the dis-

CHAPTER 21—POST-TRIAL MOTIONS

95-2101. New trial.

Bail

Trial court abused its authority in denying bail to defendant whose conviction for first-degree murder was reversed and remanded for a new trial, where defendant offered evidence of good conduct while in prison, was released on bail for a period of two weeks after a verdict but appeared for sentencing, made proof as to an amount of bail and its availability, and was not a security risk; presumption of guilt sufficient to deny bail was not established by previous trial transcript where appellate court did not discuss five issues, including the sufficiency of the evidence. State v. Campbell, 160 M 111, 500 P 2d 801.

Newly Discovered Evidence

Trial court did not err in denying defendant's motion for new trial based on newly discovered evidence in form of statements taken from two witnesses subsequent to trial where such statements were found to contain certain discrepancies

by police officers who investigated facts and questioned such individuals and where such evidence added nothing new beyond mere speculation to existing evidence. State v. Quigg, 155 M 119, 467 P 2d 692, distinguished in 160 M 344, 502 P 2d 1138.

Motion for new trial on the basis of newly discovered evidence filed in district court after thirty-day period for filing with district court was untimely and filed in the wrong court. If the grounds for seeking a new trial do not arise until after the thirty-day period or until after the appeal is filed, the proper procedure is to stay the appeal, remand the case to the district court, file the motion, secure the district court's decision thereon, and continue with the appeal. The supreme court has no jurisdiction to entertain a motion for new trial in the first instance where no reason is advanced nor any basis apparent for failure to follow this procedure. State v. Best, 161 M 20, 503 P 2d 997.

CHAPTER 22—SENTENCE AND JUDGMENT

Section

- | | |
|------------|--|
| 95-2206. | Sentence. |
| 95-2206.1. | Sentence to death. |
| 95-2206.2. | When no place of imprisonment is specified. |
| 95-2206.3. | When no penalty is specified. |
| 95-2206.4. | When no felony penalty is specified. |
| 95-2206.5. | Judicial designation of persistent felony offenders for purposes of parole eligibility. |
| 95-2217. | Prisoner furlough program—purpose and intent. |
| 95-2218. | Definitions. |
| 95-2219. | Department to establish program and rules. |
| 95-2220. | Application for participation in furlough program. |
| 95-2221. | Consideration of application—furlough plan—notification or consent of sheriff necessary—duties of board. |
| 95-2222. | Disposition of prisoner's earnings—trust fund—schooling costs. |
| 95-2223. | Administrative rules—co-operation by state agencies. |
| 95-2224. | Prisoner not agent, or involuntary servant. |

- 95-2226.1. Responsibility of department and supervising agency—change or revocation of furlough—escape.
 95-2227. Effect of conviction.
 95-2228. Fines, costs and forfeitures, how disposed of.
 95-2229. Traffic fines collected from juvenile offenders—disposition.

95-2204. Contents of investigation.

Prior Charges

Evidence of prior felony charges was even though there had been no previous conviction. State v. Harris, 159 M 425, 498 admissible on presentence investigation P 2d 1222.

95-2206. Sentence. Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty the court may:

(1) Defer imposition of sentence for a period not to exceed one (1) year for any misdemeanor; for a period not to exceed three (3) years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (a) jail base release;
- (b) jail time not to exceed ninety (90) days;
- (c) conditions for probation;
- (d) restitution;
- (e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;
- (f) any combination of the above.

(2) Suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

- (a) jail base release;
- (b) jail time not to exceed (90) days;
- (c) conditions for probation;
- (d) restitution;
- (e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;
- (f) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise order.

- (3) Impose a fine as provided by law for the offense.
- (4) Commit the defendant to a correctional institution with or without fine by law for the offense.
- (5) Impose any combination of subsections (2), (3), or (4) above.

(6) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

- (a) prohibit the defendant the right to hold public office;
 - (b) prohibit the defendant the right to own or carry a dangerous weapon;
 - (c) prohibit freedom of association;
 - (d) prohibit freedom of movement;
 - (e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.
- (7) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in subsection (6).

Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

History: En. 95-2206 by Sec. 31, Ch. 513, L. 1973.

Compiler's Notes

Chapter 513 repealed former section 95-2206 effective January 1, 1974 and enacted a new section.

Credit for Time Elapsed Under Suspended Sentence

Crediting of elapsed time upon revocation of suspended sentence is within discretion of trial court. *Petition of Doney*, — M —, 522 P 2d 93.

Deferred Imposition of Sentence

Trial court could revoke deferred imposition of sentence after defendant refused to testify against another defendant, even though his co-operation with the state was not made a formal condition of the judgment deferring sentence but was orally cited by the judge as his reason for deferring sentence. *State v. Lintz*, — M —, 509 P 2d 13.

DECISIONS UNDER FORMER LAW

Condition of Deferred Sentence

Conditioning deferred imposition of sentence on serving term of thirty days in county jail was proper exercise of court's sentencing authority where eighteen year old defendant entered guilty plea and was convicted on charge of sale of dangerous drugs. *State ex rel. Woodbury v. District Court*, 159 M 128, 495 P 2d 1119, distinguishing *State v. Drew*, 158 M 214, 490 P 2d 230.

Condition of Parole

Imposing the condition that parolee not be found in the company of any persons under the age of eighteen years and condition that parolee refrain from being in and around the vicinity of certain grade schools, junior high schools, and high schools were within the court's discretion. In re *Petition of Dunn*, 158 M 73, 488 P 2d 902.

Discretion of Court

The Dangerous Drug Act (54-133 (c)), contemplates that a verdict or plea will be taken and the imposition of sentence deferred or stayed for no longer than three years; the court can impose conditions of probation during the deferment which are not contradictory to a stay of sentence or deferred sentence. *State v. Drew*, 158 M 214, 490 P 2d 230, distinguished in 159 M 128, 495 P 2d 1119, 1123.

When sentencing a person under 21 pursuant to a special statute (54-133(c)) of the Dangerous Drug Act, the court's discretion is limited by the presumption of entitlement to a deferred imposition of sentence under subsection 2 of former sec. 95-2206. *State v. Drew*, 158 M 214, 490 P 2d 230.

Good Behavior

Defendant whose sentence for term of three years in state prison was ordered

suspended during good behavior was improperly denied credit for time spent on parole when suspended sentence was revoked. *Barrows v. State*, 155 M 522, 474 P 2d 145.

Jury Instructions

Instructing jury on punishments that could be imposed upon conviction, including probation, deferred sentence and suspended sentence, was prejudicial error; such instructions should not be given in future cases. *State v. Zuidema*, 157 M 367, 485 P 2d 952, distinguishing *State v. Metcalf*, 153 M 369, 457 P 2d 453.

Revocation of Deferred Sentence

Where defendant was neither represented by counsel nor told of right to have counsel present at hearing for revocation of deferred sentence, district court erred in denying defendant's motion to vacate the prison sentence that was imposed as a result of the revocation. *Petition of Brittingham*, 155 M 525, 473 P 2d 830.

Where deferred sentence has been revoked, accused stands before sentencing judge as he did at time of original order; where one charged with assault in second degree and attempted rape was placed

on two-year probation and thereafter was brought to trial and plead guilty to subsequent offenses, including another case of second degree assault, revocation of probation and imposition of six-year sentence on first assault charge and concurrent thirty-year sentence on second assault charge were not error. *Newman v. Estelle*, 156 M 502, 484 P 2d 276, certiorari denied 404 US 966, 92 S Ct 341.

Suspension of Sentence

Where district court decision revoking defendant's probation and imposing previously deferred sentence was reversed and remanded by supreme court three years later, defendant was placed in same status he had prior to district court's decision, so that sentence had not been suspended for more than three years contrary to subsection (2) of this section. *Petition of Brittingham*, 156 M 89, 475 P 2d 34.

Where the defendant is granted a suspended sentence, sentence is imposed and execution of sentence is suspended in whole or in part up to the maximum time of sentence allowed by law, and the defendant can be released on probation during the time interval with the conditions of probation imposed by the court. *State v. Drew*, 158 M 214, 490 P 2d 230.

95-2206.1. Sentence to death. When a person is convicted of an offense punishable by death or imprisonment, the court may sentence the offender to death or imprisonment.

History: En. 95-2206.1 by Sec. 31, Ch. 513, L. 1973.

95-2206.2. When no place of imprisonment is specified. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed one (1) year shall be to the county jail.

History: En. 95-2206.2 by Sec. 31, Ch. 513, L. 1973.

95-2206.3. When no penalty is specified. The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided, or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed six (6) months in the county jail or a fine not to exceed five hundred dollars (\$500), or both. Where statutes outside of the criminal code refer to a subsequently repealed section in Title 94 for a penalty, then the penalty shall be a fine not to exceed five hundred dollars (\$500) or imprisonment in the county jail for a term not to exceed six (6) months, or both.

History: En. 95-2206.3 by Sec. 31, Ch. 513, L. 1973.

95-2206.4. When no felony penalty is specified. The court in imposing sentence upon an offender convicted of an offense which is designated as a felony, and no penalty is otherwise provided, may sentence the offender for any term not to exceed ten (10) years in the state prison.

History: En. 95-2206.4 by Sec. 31, Ch. 513, L. 1973.

DECISIONS UNDER FORMER LAW

Application

Statutes providing for punishment of felony when not otherwise prescribed was not applicable to sentence for robbery since it merely provides penalties for

crimes not otherwise provided for by statute. Petition of Eldiwitw, 153 M 468, 457 P 2d 909; Petition of O'Rourke, 154 M 265, 461 P 2d 1.

95-2206.5. Judicial designation of persistent felony offenders for purposes of parole eligibility. (1) When an offender has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first, the sentencing court shall designate the offender a persistent felony offender for purposes of eligibility for parole under section 95-3214, provided:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of one (1) year could have been imposed; and

(b) less than five (5) years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction, or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(c) the offender was more than eighteen (18) years of age at the time of the commission of the present offense.

(2) A previous felony conviction shall not be considered for the purposes of this section if the offender has been pardoned on the grounds of innocence, or if the conviction had been set aside in any post-conviction hearing.

(3) A judicial determination of persistent felony offender under this section may be made only when the conviction for the present offense occurs after July 1, 1975.

History: En. 95-2206.5 by Sec. 2, Ch. 312, L. 1975.

Title of Act

An act to require a judicial designation of certain felony offenders as persistent

felony offenders for purposes of parole eligibility; to equalize goodtime allowances for all offenders; to allow inmates good time for designated self-improvement activities; amending sections 80-1905, 95-3214, and 95-3215, R. C. M. 1947.

95-2207. Withdrawal of plea on a deferred imposition.

Intent of Legislature

The passage of this section demonstrates the intent of the legislature in regard to deferred imposition of sentence; if sentence were imposed or executed in any

part, then the end advantage to the entire concept of the deferred sentence could not be attained and this section would become inoperative. State v. Drew, 158 M 214, 490 P 2d 230.

95-2213. Merger of sentences.**Concurrent Sentence Unless Specified**

Under this section, if district court does not specify whether sentence is to run concurrently or consecutively, it will run

concurrently with any prior commitment. Petition of Parrett, 154 M 257, 459 P 2d 268.

95-2215. Credit for incarceration prior to conviction.**Credit for Time Served upon Reinstated Sentence**

Prison time previously served as a condition of deferment of sentence must be credited against the prison term imposed upon revocation of petitioner's deferred imposition of sentence; defendant convicted of crime of possession of dangerous drugs, who served four months in the state prison to fulfill condition for deferred imposition of sentence, was, during the four months, incarcerated on a bailable offense. State ex rel. Bovee v. District Court, Sixth Judicial Dist., Park County, — M —, 508 P 2d 1056.

Credit on Deferred Imposition of Sentence

Period of confinement in county jail was not credited to period of deferred imposition of sentence since a deferred imposition of sentence is not a judgment of imprisonment. Petition of Gray, — M —, 517 P 2d 351.

Prior Incarceration in Other States

This statute has application only to Montana offenses and sentences, and has no application to time served in prisons or jails of other states. Petition of Woods, — M —, 535 P 2d 173.

Retroactive Application

This section did not apply to prisoner who was sentenced after effective date of this section for crime committed prior to such effective date. Petition of Wilson, 154 M 508, 463 P 2d 469.

Work Release Confinement

Where defendant had been confined under county jail work release program as condition of continuation of deferred sentence, he was entitled to credit for time in such jail upon revocation of deferment and imposition of sentence. Maldonado v. Crist, — M —, 510 P 2d 887.

95-2217. Prisoner furlough program—purpose and intent. The purpose and intent of this act is to establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison; to increase their responsibility to society; to make it possible that they may, while serving their sentences, work gainfully to support their dependents in whole or in part; and providing for the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer to be paid to said convicts while so employed; continue their education or training; and at the same time fulfill the obligations of the sentence of imprisonment imposed; placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions. The prisoner program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes. This act is to be liberally construed to effect the over-all objectives set forth above.

History: En. Sec. 1, Ch. 288, L. 1969; amd. Sec. 1, Ch. 496, L. 1975.

Amendments

The 1975 amendment substituted "the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer" for "a minimum wage of one and 40/100 (\$1.40) dollars an hour";

substituted "department of institutions. The prisoner" for "warden of the state prison with the advice and consent of the state board of pardons, which" at the end of the first sentence; and added "and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes" at the end of the second sentence.

95-2218. Definitions. Unless the context requires otherwise, in this act:

(1) "Department" means the department of institutions provided for in section 82A-801;

(2) "Board" means the board of pardons provided for in section 82A-804.

(3) "State prison" means the Montana state prison at Deer Lodge and any adult correctional facility under the direction of the department;

(4) "Prisoner" means a person sentenced by a district court to a term of confinement in the state prison;

(5) "Supervising agency" means any federal, state, county, local or private agency, Indian tribe and reservation, or any person, group, association or organization approved by the department to undertake the supervision of prisoners participating in the furlough program;

(6) "Jail" means any county jail or tribal jail;

(7) "Applicant" means any prisoner who has signed an application to participate in the prisoner furlough program.

History: En. Sec. 2, Ch. 288, L. 1969; amd. Sec. 2, Ch. 496, L. 1975.

Amendments

The 1974 amendment added "provided for in section 82A-804" to subdivision (1); and made minor changes in phraseology and punctuation.

The 1975 amendment inserted subdivision (1); redesignated former subdivisions

(1) to (5) as (2) to (6); deleted "state" before "board of pardons" in subdivision (2); added "and any adult correctional facility under the direction of the department" at the end of subdivision (3); substituted the definition of "supervising agency" in subdivision (5) for the former definition of "sheriff"; added "or tribal jail" at end of subdivision (6); and added subdivision (7).

95-2219. Department to establish program and rules. The department is authorized and directed to establish a furlough program and rules to implement and control the same. Rules shall include provisions for:

(1) Working at paid employment for a rate of pay not less than the minimum hourly wage as required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer;

(2) Participating in an educational, treatment, or training program;

(3) Approval of supervising agency; and

(4) Review of determinations in furlough application.

History: En. Sec. 3, Ch. 288, L. 1969; amd. Sec. 3, Ch. 496, L. 1975.

Amendments

The 1975 amendment substituted "department" for "warden" at the beginning of the section; substituted "Rules shall include provisions for" for "A prisoner sentenced to the state prison may be granted the privilege of" at the beginning of the second sentence; substituted "the

minimum hourly wage as required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer" for "a rate of pay not less than one and 40/100 (\$1.40) dollars an hour" in subdivision (1); inserted "treatment" before "or training" in subdivision (2); added subdivisions (3) and (4); and made minor changes in punctuation.

95-2220. Application for participation in furlough program. Any prisoner confined in the state prison may make application to participate in the furlough program at least by the time the inmate has served one-half (1/2) of the time required to be considered for parole.

History: En. Sec. 4, Ch. 288, L. 1969;
amd. Sec. 4, Ch. 496, L. 1975.

Amendments

The 1975 amendment substituted "at

least by the time the inmate has served one-half ($\frac{1}{2}$) of the time required to be considered for parole" for "according to rules adopted by the warden with the advice and consent of the board."

95-2221. Consideration of application—furlough plan—notification or consent of sheriff necessary—duties of board. (1) At the meeting of the board following the signing of any prisoner's application the board shall approve or deny the application of each prisoner after careful study of the prisoner's furlough plans, criminal history, and all other pertinent case material. The following rules shall be observed when the board meets to consider an application:

(a) each applicant may call two (2) witnesses from outside or inside the institution to testify as to the applicant's general attitude, participation in self-help activities, or his character or job references;

(b) an applicant may remain present during the board proceedings on his application; however, the board may meet in executive session without the applicant for final decision on the application;

(c) the board shall cause the applicant to be notified of its decision immediately and shall provide the applicant with a written decision including a thorough statement of the reasons for the decision within two (2) days following adjournment;

(d) each applicant shall be viewed singly, and shall be recognized as an individual;

(e) each applicant shall be allowed to discuss any specific problem areas with any member of the board.

(2) If the application is approved, the department shall, within the shortest possible time, locate an agency capable of supervising the applicant.

(3) The supervising agency, the department, and the applicant shall enter into a written agreement setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties. The agreement shall be executed, signed by the parties before a notary public, in triplicate, with one copy to be filed with the supervising agency and the department and one copy to be retained by the applicant.

(4) Upon the signing of the agreement, the prisoner shall be released to the supervising agency.

(5) Final authority in all matters pertaining to prisoner furloughs is in the department.

(6) When an inmate is to reside in the county or tribal jail, the consent of the sheriff or tribal chief of police in the receiving county or reservation is necessary. However, when the inmate is to reside in a community corrections center or some other supervised setting the sheriff or tribal chief of police of the receiving county or reservation shall be notified.

(7) If the application is denied the prisoner may reapply after six (6) months' time. After an applicant has been denied three (3) times he may appeal to the department for a hearing.

History: En. Sec. 5, Ch. 288, L. 1969;
amd. Sec. 5, Ch. 496, L. 1975.

Amendments

The 1975 amendment inserted "At the meeting of the board following the signing

of any prisoner's application" at the beginning of the section; deleted "conduct, attitude and behavior in the prison in which the prisoner is confined" after "study of the prisoner's" in subsection (1); inserted "furlough plans" before "criminal history" in subsection (1); inserted the introductory phrase and subdivisions (1)(a) to (e); substituted present subsection (2) for "If the application is

approved, the warden shall adopt a furlough plan for the prisoner, which shall constitute an extension of the limits of confinement"; substituted present subsection (3) for "No prisoner shall be released without the written consent of the sheriff of the county receiving the prisoner"; added subsections (4) to (7); and made minor changes in phraseology.

95-2222. Disposition of prisoner's earnings—trust fund—schooling costs. (1) A prisoner employed in the community under a work furlough plan shall enter into a written financial agreement with the supervising agency and the department concerning the acquisition and disposition of his earnings. This financial agreement shall provide for the payment of:

(a) A standard charge for providing food, lodging and clothing for the prisoner if incurred and if applicable;

(b) The actual and necessary travel and other expenses of the prisoner under furlough from actual confinement under the program;

(c) An amount to pay for the support of his dependents, which amount shall be paid to the dependents; and

(d) An allowance for personal items, and other expenses or disbursements agreed upon by the prisoner and the supervising agency.

(2) Unless the financial agreement specifically provides for other disbursement of the money, any balance remaining after deductions and payments shall be deposited to an interest-bearing account held in trust for the prisoner and shall be paid to him upon release.

(3) If no other sources of support are available, the costs of a prisoner under furlough who is in training or school shall be the responsibility of the state.

History: En. Sec. 6, Ch. 288, L. 1969; amd. Sec. 6, Ch. 496, L. 1975.

Amendments

The 1975 amendment substituted the present provision for financial agreement in subsection (1) for a former provision that the prisoner's earnings be surrendered to the sheriff; substituted "a standard charge for providing food" for "a standard charge for all prisoners determined by the county commissioners to be the cost to the county of providing food" in subsection (1)(a); added "if incurred and if applicable" at the end of subsection (1)

(a); substituted in subdivision (c) "An amount to pay for the support of his dependents" for "Such amount as the prisoner may be determined by the district judge to pay for the support of his dependents"; deleted "minimal" before "allowance" in subsection (d); added the last part of the sentence in subdivision (d); inserted "Unless the financial agreement specifically provides for other disbursement of the money" at the beginning of subsection (2); inserted "If no other sources of support are available" at the beginning of subsection (3); and made minor changes in style and phraseology.

95-2223. Administrative rules—co-operation by state agencies. (1) The department is authorized to make rules for the administration of the provision of this act in accordance with Title 82, chapter 42, R. C. M. 1947.

(2) All state, county and local agencies shall be encouraged to co-operate in the administration of the furlough program.

History: En. Sec. 7, Ch. 288, L. 1969; amd. Sec. 7, Ch. 496, L. 1975.

Amendments

The 1975 amendment substituted "department" for "warden" at the beginning

of the section; substituted "in accordance with Title 82, chapter 42, R. C. M. 1947" for "with the advice and consent of the board" in subsection (1); inserted "county

and local" in subsection (2); substituted "shall be encouraged to co-operate" for "shall co-operate with the warden and sheriff" in subsection (2).

95-2224. Prisoner not agent, or involuntary servant. No prisoner in the community under the provisions of this act shall be deemed to be an agent, or involuntary servant of the department or of the supervising agency while released from confinement pursuant to the terms of the furlough program. Abuse of this section shall be deemed official misconduct pursuant to 94-7-401, R. C. M. 1947.

History: En. Sec. 8, Ch. 288, L. 1969; amd. Sec. 8, Ch. 496, L. 1975.

Amendments

The 1975 amendment deleted "employed"

after "prisoner" at the beginning of the section; deleted "employee" after "agent"; substituted "department or of the supervising agency" for "warden or sheriff"; and added the second sentence.

95-2226. Repealed.

Repeal

Section 95-2226 (Sec. 10, Ch. 288, L. 1969; Sec. 93, Ch. 120, L. 1974), relating to the responsibility of the sheriff in

cancellation or revocation of furlough of a convicted person, was repealed by Sec. 11, Ch. 496, Laws 1975.

95-2226.1. Responsibility of department and supervising agency—change or revocation of furlough—escape. (1) The department shall be responsible for the activities of a prisoner participating in a furlough program under this act. The department may delegate jurisdictional supervision of work furlough participants to the adult parole and probation field service. The supervising agency shall be responsible for those activities of a furloughed prisoner for which it is responsible in the written furlough agreement.

(2) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules and regulations of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency. If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner is entitled to have counsel appointed to represent him at the hearing. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under section 95-3220, R. C. M. 1947, pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be canceled and the prisoner shall be returned to the prison. At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has, in fact, violated the terms of the prisoner's furlough release. If it is determined that the prisoner has, in fact, violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release

have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out.

(3) If the department determines after having been advised by the supervising agency or the adult parole and probation field service, that a prisoner presents an immediate grave threat to the community in which he is furloughed, it may order the prisoner returned to prison before a hearing is held, but in this case a hearing on the charges against the prisoner, as provided for in the above subsection, must be held by the board no later than thirty (30) days after the return of the prisoner to the state prison.

(4) If, after a reasonable time, a furloughed prisoner determines that his furlough plan is unsatisfactory due to personality conflict, a violation of his rights by his supervisor, or a change of interest or employment status, the department shall grant him a hearing to determine whether or not a new furlough plan should be executed.

(5) If a prisoner, while not disabled from working by temporary illness, is unemployed for a period of thirty (30) days, or more, after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs, or if a prisoner has become so disabled as to be unemployable, or if a prisoner is on an educational furlough and has demonstrated for a period of six (6) weeks or more that he is unable to benefit from schooling, treatment, or training, then the prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training. At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference. If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to determine an alternate proposal. In this hearing the prisoner is entitled to have counsel appointed to represent him. Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison.

(6) For the purpose of this act, the provisions relating to escape in section 94-7-306, R. C. M. 1947, shall apply, unless aggravating circumstances require a more severe penalty.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975.

2217 through 95-2224, R. C. M. 1947, and repealing section 95-2226, R. C. M. 1947.

Title of Act

An act to amend the prisoner furlough program providing for supervision of prisoners by public and private supervising agencies, and placing responsibility for the program with the department of institutions by amending sections. 82-4202, 95-

Separability Clause

Section 10, Ch. 496, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect

in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 11, Ch. 496, Laws 1975 read "Section 95-2226, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Parole Violation

Former section 95-2226 did not apply to prisoner released on parole but not on furlough, and prisoner was not entitled

to counsel as a matter of right at hearing on parole violation. Petition of Osier, 156 M 165, 477 P 2d 344.

95-2227. Effect of conviction. (1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

History: En. 95-2227 by Sec. 9, Ch. 513, L. 1973.

DECISIONS UNDER FORMER LAW

Inheritance by Slayer From Decedent

Wife who unlawfully killed husband could not take from his estate by dower or intestate succession, nor take his share

in jointly owned property, but rather she became constructive trustee for other beneficiaries and devisees. Sikora v. Sikora, 160 M 27, 499 P. 2d 808.

95-2228. Fines, costs and forfeitures, how disposed of. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue, if not otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the said fine or forfeiture is paid to the county treasurer at the time of such payment there shall be filed with the county treasurer, a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. 95-2228 by Sec. 10, Ch. 513, L. 1973.

95-2229. Traffic fines collected from juvenile offenders—disposition. All fines collected by the district courts from children under eighteen (18) years of age for unlawful operation of motor vehicles resulting from traffic summonses issued by the peace officers of the cities, counties, or by highway patrolmen, together with that portion of the fines which is specified in section 75-7903 shall be retained by the county treasurer of the

county in which the offense occurred and at the end of each month distributed as follows:

(a) fines collected as the result of summonses issued by city police officers shall be distributed to the city in which the police officer is employed, and credited to the city general fund;

(b) fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund;

(c) fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer of Montana and by him credited to the general fund of the state;

(d) that portion of the fines, as provided for in section 75-7903, shall be paid to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. 95-2229 by Sec. 11, Ch. 513, L. 1973.

CHAPTER 23—EXECUTION OF SENTENCE

Section

95-2305. Proceedings upon finding of lack of mental fitness.

95-2311. Hearings requested by other states—power of board of pardons and department of institutions to hold.

95-2305. Proceedings upon finding of lack of mental fitness. If it is found that defendant is mentally fit as provided in section 95-2304, the sheriff must execute the judgment; but if it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of Warm Springs state hospital, to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures. When the court, on its own motion or upon application of the superintendent of Warm Springs state hospital, or the county prosecuting officer, or the defendant or his legal representative, determines after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the sheriff shall be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant, that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.

History: En. 95-2305 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 94, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "Warm Springs state hospital" for "Montana state

hospital" in the first and second sentences; substituted "department of institutions" for "state department of public institutions" in the first sentence; and made minor changes in phraseology and punctuation.

95-2311. Hearings requested by other states—power of board of pardons and department of institutions to hold. The board of pardons and the department of institutions shall hold such hearings as may be requested

by any other party state pursuant to section 95-2308, subsection 4 (f) of the Western Interstate Corrections Compact.

History: En. 95-2311 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 95, Ch. 120, L. 1974.

Repealing Clause

Section 96 of Ch. 120, Laws 1974 read "Sections 38-108(1), 38-117, 38-119, 38-406.1, 69-6402, 80-1404, 80-1407 through 80-1409, 80-2207, 80-2311, 80-2601 through 80-2603, 82-903, 82A-802, 82A-803, 82A-807, 94-3208, 94-9851, R. C. M. 1947, are repealed."

Amendments

The 1974 amendment substituted "board of pardons" for "board of pardons and paroles"; substituted "department of institutions" for "state department of institutions"; and made minor changes in phraseology.

CHAPTER 24—APPEAL BY STATE AND DEFENDANT

95-2401. Application of chapter.

Petition for Writ to Dismiss

Remedy of original petition for writ to dismiss criminal action was not available on grounds of double jeopardy, after motion for mistrial had been granted over

the objection of the defendant and cause had been set for new trial, since the only review in criminal cases is by notice of appeal. State ex rel. LaFlesch v. District Court, — M —, 529 P 2d 1403.

95-2402. Suspension of the rules.

Mistrial

The remedy of a criminal defendant lies in an appeal following his conviction, or in a post-conviction proceeding except where the writ of habeas corpus is applicable, and the supreme court will not

suspend the rule to consider the validity of the granting of a motion for mistrial, but the defendant must proceed in accordance with the rules to secure a prompt and fair trial. State ex rel. LaFlesch v. District Court, — M —, 529 P 2d 1403.

95-2403. Scope of appeal.

Interlocutory Orders

State may appeal from interlocutory order; such appeals are governed by this

chapter. State v. Bergum, — M —, 520 P 2d 653.

95-2404. Scope of appeal.

Guilty Plea

The issue of suppression of evidence is a matter of defense at trial and may become an issue upon appeal; but where a guilty plea has been entered the defendant is convicted upon his plea of guilt and not upon the evidence. State v. Turcotte, — M —, 524 P 2d 787.

had been set for new trial, since there had been no final judgment. State ex rel. LaFlesch v. District Court, — M —, 529 P 2d 1403.

Question of Law

Contention by appellant that he was improperly sentenced for violation of Dangerous Drug Act due to lack of evidence necessary to overcome presumption regarding sentencing of persons 21 years old or under was clearly legal question properly addressed to supreme court. State v. Simtob, 154 M 286, 462 P 2d 873.

Mistrial

Remedy of original petition for writ to dismiss criminal action was not available on grounds of double jeopardy, after motion for mistrial had been granted over the objection of the defendant and cause

timely. State v. Bergum, — M —, 520 P 2d 653.

95-2405. Procedure on appeal.

Interlocutory Orders

Appeal from interlocutory order filed fifty-five days after entry of order was

95-2412. Ruling against respondent may be reviewed.**Harmless Error**

Instructing jury on assault by willfully inflicting grievous bodily harm when defendant had been charged with assault with intent to prevent or resist his law-

ful detention or apprehension was harmless error where the evidence conclusively demonstrated defendant's guilt of the offense charged. *State v. Jones*, 161 M 117, 505 P 2d 97.

95-2425. Substantial and insubstantial errors on appeal.**Comments on Defendant's Past Record**

Statement by prosecuting attorney in closing argument that the perpetrators of the crime were "thick as thieves" was not construed as a comment on the past record of the defendant but merely as an argument that the defendant was guilty of the robbery of which he was charged in that prosecution and did not affect any substantial right of the defendant. *State v. Romero*, 161 M 333, 505 P 2d 1207.

Remarks of prosecutor referring to the defendant's association with the drug culture, although offensive, were reasonably founded on the testimony and evidence, and such remarks did not deny the defendant a fair trial. *State v. Flamm*, — M —, 526 P 2d 119.

Jury Instructions

Instructing jury on assault by willfully inflicting grievous bodily harm when defendant had been charged with assault with intent to prevent or resist his lawful detention or apprehension was harmless error where the evidence conclusively demonstrated defendant's guilt of the offense charged. *State v. Jones*, 161 M 117, 505 P 2d 97.

95-2428. Indigent appeals.**Determining Financial Need**

It would have been unconscionable to permit proceeding in forma pauperis by petitioner whose income for previous year was \$13,000 and who had house, vehicles

Remark in the Presence of Jurors

A statement of opinion, made in the presence of other jurors by a prospective juror who was never seated, that she was convinced that the defendants were guilty, was not a sufficient showing of prejudice to require a new trial. *State v. Rhodes*, — M —, 524 P 2d 1095.

Technical Errors—Jury Participation

Prosecuting attorney's invitation to a juror to participate in an experiment not supported by the evidence was harmless error, where the juror did not participate, and the court immediately sustained the defendant's objection. *State v. Thompson*, — M —, 524 P 2d 1115.

Technical Errors—Witness's Remarks

Where trial court on defendant's motion directed state's witnesses not to reveal victim's pregnancy, fact that one witness mentioned the pregnancy to jury did not provide basis for mistrial, since no substantial right was affected. *State v. Bentley*, 155 M 383, 472 P 2d 864.

and furniture worth over \$11,000, even though petitioner had only a small bank balance and owed over \$800 in taxes. *Petition of Allen*, 156 M 163, 476 P 2d 510.

CHAPTER 25—APPELLATE REVIEW OF LEGAL SENTENCES**95-2503. Review—decision.****Questions Reviewable**

Review division established by this chapter provides appellate review of "legal" sentences and therefore could not review contention by defendant that his sentence under Dangerous Drug Act was "illegal" under statutory presumption regarding sen-

tencing. *State v. Simtob*, 154 M 286, 462 P 2d 873.

Sentence Increase

Increase of sentence under this section did not constitute double jeopardy or denial of due process or equal protection of the laws. *State v. Henrich*, — M —, 509 P 2d 288.

CHAPTER 26—POST-CONVICTION HEARING**95-2601. Petition in the trial court.**

NOTE.—Uniform State Law. The following states have enacted the Uniform Post-Conviction Procedure Act: Arkansas,

Idaho, Iowa, Maryland, Minnesota, Nevada, North Dakota, Oregon, South Carolina and South Dakota.

Mistrial

After motion for mistrial was granted, defendant's petition to supreme court for dismissal of subsequent trial on grounds of double jeopardy was dismissed, since

defendant had not yet been adjudged guilty of any offense. State ex rel. LaFlesch v. District Court, — M —, 529 P 2d 1403.

CHAPTER 27—HABEAS CORPUS

95-2701. Who may prosecute writ.**Indigent Prisoners**

Denial of trial transcript to an indigent prisoner does not violate his rights unless there has been some showing of need or a meritorious reason; denial of transcript did not deprive prisoner of his right

of access to courts where transcript was requested for purpose of searching for possible error on which to base a collateral attack on his sentence. Petition of Parker, — M —, 511 P 2d 973.

95-2716. No release for technical defects.**Technical Defects**

Where court intended to vacate sentence to permit representation by counsel but said that it was vacating judgment, this

was a mere technical defect and would not form the basis for habeas corpus. Petition of Eldiwitw, 153 M 468, 457 P 2d 909.

CHAPTER 28—IMPEACHMENT

Section

- 95-2801. Officers liable to impeachment.
 95-2802. Sole power of impeachment.
 95-2803 to 95-2817. [Transferred from Title 94.]
 95-2819. [Transferred from Title 94.]

95-2801. (11668) Officers liable to impeachment. The governor, executive officers, heads of state departments, and judicial officers shall be liable to impeachment for felonies and misdemeanors, or malfeasance in office.

History: Our present impeachment laws are substantially the same as the territorial acts which provided for trial by the council. See Secs. 41-62, pp. 196-199, Cod. Stat. 1871; re-en. as Secs. 41-62, 3d Div. Rev. Stat. 1879; re-en. as Secs. 41-63, 3d Div. Comp. Stat. 1887; re-en. Sec. 1500, Pen. C. 1895; re-en. Sec. 8972, Rev. C. 1907; re-en. Sec. 11668, R. C. M. 1921; Sec. 94-5401, R. C. M. 1947; amd. Sec. 2, Ch. 5, L. 1973; redes. 95-2801 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 737.

95-103. However, it has not been reprinted in this supplement under its new number since there has been no change in text.

The section shown above as sec. 95-2801 was formerly sec. 94-5401 but was redesignated by Ch. 513, Laws of 1973. For the prior version, see bound Volume Eight under 94-5401.

Amendments

The 1973 amendment substituted "executive officers, heads of state departments" for a reference to other state officers; deleted "except justices of the peace" following "judicial officers"; and substituted "felonies" for "high crimes."

Compiler's Notes

Section 95-2801, as shown in bound Volume Eight, is still in force as section

95-2802. (11669) Sole power of impeachment. The sole power of impeachment vests in the house of representatives; the concurrence of two-thirds ($\frac{2}{3}$) of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial,

the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

History: En. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R. C. M. 1921; Sec. 94-5402, R. C. M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redcs. 95-2802 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

Section 95-2802, as shown in bound Volume Eight, is still in force as section 95-104. However, it has not been reprinted in this supplement under its new number since there has been no change in text.

The section shown above as sec. 95-2802 was formerly sec. 94-5402 but was redesignated by Ch. 513, Laws of 1973. For the prior version, see bound Volume Eight under 94-5402.

Amendments

The 1973 amendment increased the vote in the house of representatives required by the first sentence from a majority to two-thirds of all members.

95-2803 to 95-2817. [Transferred from Title 94.]

Compiler's Notes

Sections 95-2803 to 95-2806, as shown in bound Volume Eight, are still in force as secs. 95-105 to 95-108. However, they have not been reprinted in this supplement under their new numbers since there has been no change in text.

Present sections 95-2803 to 95-2817 were originally numbered 94-5403 to 94-5417. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-2803	94-5403
95-2804	94-5404
95-2805	94-5405
95-2806	94-5406
95-2807	94-5407
95-2808	94-5408
95-2809	94-5409
95-2810	94-5410
95-2811	94-5411
95-2812	94-5412
95-2813	94-5413
95-2814	94-5414
95-2815	94-5415
95-2816	94-5416
95-2817	94-5417

95-2819. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-5419. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this

title. Because there has been no change in the section, it is not reprinted here but may be found as sec. 94-5419 in bound Volume Eight.

CHAPTER 29—PRESUMPTION OF INNOCENCE

Section

95-2901, 95-2902. [Transferred from Title 94.]

95-2901. (11971) Defendant presumed innocent—reasonable doubt.

Compiler's Notes

This section was originally numbered 94-7203. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-7203.

Burden of Proof

Jury instruction taken verbatim from section 94-2704.1 that stated that possession of recently stolen livestock is prima facie evidence of guilt of larceny did

not constitute reversible error, since, even though state has burden of proof in criminal cases, the burden of evidence may shift to defendant. State v. Gloyne, 156 M-94, 476 P 2d 511.

Circumstantial Evidence

Conviction of defendant on charge of burglary in first degree on only circumstantial evidence consisting of ten rolls of half-dollars, three of which had been identified by store owner in front of witness, fact that defendant's father-in-law two weeks after burglary had de-

posited these rolls of half-dollars in bank after receiving them from defendant in payment of debt, and testimony by one witness that she had seen defendant in store two days before burglary, did not violate this section on grounds that evidence was insufficient to warrant conviction; burden of proof never shifts, but burden of evidence may shift frequently,

and where all evidence is circumstantial, test is whether facts and circumstances are of such quality and quantity to support jury determination of guilt beyond reasonable doubt; fact alone that evidence is circumstantial is not sufficient grounds to justify reversal. *State v. Proctor*, 153 M 90, 454 P 2d 616.

95-2902. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-7204. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title.

Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-7204.

CHAPTER 30—EVIDENCE

Section

95-3001, 95-3002. [Transferred from Title 94.]

95-3004. The burden in a homicide trial.

95-3010, 95-3011. [Transferred from Title 94.]

95-3012. Testimony of person legally accountable.

95-3001, 95-3002. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-7209 and 94-7210. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not re-

printed here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3001	94-7209
95-3002	94-7210

95-3004. The burden in a homicide trial. (a) In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death, and that the death was caused by a criminal agency.

(b) In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances or mitigation, excuse or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973.

DECISIONS UNDER FORMER LAW

Mitigation

Stepfather charged with murder in beating death of his stepchild was entitled to instructions on voluntary and involuntary manslaughter in view of testimony that his striking the child was for disciplinary purposes and that he never intended to hurt her; since evidence relied

on by prosecution to establish guilt also tended to show circumstances of mitigation, defendant did not have burden of coming forth with proof of mitigation as prerequisite to instructions on lesser offense of manslaughter. *State v. Taylor*, — M —, 515 P 2d 695.

95-3010. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-8801. Section 29, Ch. 513, Laws of 1973 renumbered it to appear in this

title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-8801.

95-3011. (12176) Competency of husband and wife as witnesses.**Compiler's Notes**

This section was originally numbered 94-8802. Section 29, Ch. 513, Laws of 1973 renumbered it to appear in this title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-8802.

Neglect of Children

Wife could testify against husband in homicide prosecution for alleged beating death of her child since such conduct amounted to "neglect" of child within this section; "neglect" includes any abuse of children whether indicted negligently or intentionally; this section, rather than 93-701-4 (1), was applicable in determining any marital privilege. *State v. Taylor*, — M —, 515 P 2d 695.

95-3012. Testimony of person legally accountable. A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in section 94-2-106, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the one responsible or legally accountable for the same offense, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, it merely shows the commission of the offense, or the circumstances thereof.

History: En. 95-3012 by Sec. 13, Ch. 513, L. 1973.

Sufficiency of Corroborative Evidence

Identification of defendants by pharmacist whose pharmacy had been robbed and

by witnesses who observed defendants and their car fleeing the scene of the robbery constituted sufficient independent corroboration of accomplice's testimony to support a conviction of robbery. *State v. Spielmann*, — M —, 516 P 2d 617.

DECISIONS UNDER FORMER LAW**Accomplice's Testimony Corroborated**

Testimony of accomplice to burglary was sufficiently corroborated by evidence that defendant owned car involved in burglary, had attended same party with other principals in burglary, was with other principals in grocery earlier on day of burglary, and admitted being in house where stolen property was discovered and knew it was there. *State v. Dess*, 154 M 231, 462 P 2d 186.

In prosecution for second degree murder, accomplice's testimony that defendant had bludgeoned teen-age girl to death after the accomplice and the defendant had raped her was sufficiently corroborated by medical evidence that the girl had been raped, testimony of witnesses

who identified the coat which defendant had worn that night and upon which the FBI had found blood spots, and testimony of a friend of defendant that defendant had told her in the presence of another of the death of the girl. *State v. Perry*, 161 M 155, 505 P 2d 113.

Who Is An Accomplice

Witness who was serving last two days of thirty-day sentence was not an accomplice where he neither acted voluntarily nor had any common intent with principals in attempted jailbreak; it was not necessary that his testimony be corroborated. *State v. Zuidema*, 157 M 367, 485 P 2d 952.

CHAPTER 31—UNIFORM CRIMINAL EXTRADITION ACT**Section**

- 95-3101. Definitions.**
95-3102. Fugitives from justice—duty of governor.
95-3103. Demand—form.
95-3104. Investigation by governor.
95-3105. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.
95-3106. Extradition of persons not present in demanding state at time of commission of crime.
95-3107. Issuance of warrant of arrest by governor—recitals therein.
95-3108. Execution of warrant—manner and place thereof.

- 95-3109. Authority of arresting officer.
- 95-3110. Rights of accused persons—application for writ of habeas corpus.
- 95-3111. Penalty for noncompliance with preceding section.
- 95-3112. Confinement of accused in jail when necessary.
- 95-3113. Arrest of accused before making of requisition.
- 95-3114. Arrest of accused without warrant therefor.
- 95-3115. Commitment to await requisition—bail.
- 95-3116. Bail—in what cases—conditions of bond.
- 95-3117. Extension of time of commitment adjournment.
- 95-3118. Bail—when forfeited.
- 95-3119. Persons under criminal prosecution in this state at time of requisition.
- 95-3120. Guilt or innocence of accused, when inquired into.
- 95-3121. Alias warrant of arrest.
- 95-3122. Fugitives from this state—duty of governors.
- 95-3123. Application for issuance of requisition—by whom made—contents.
- 95-3124. Fugitives from this state—accounts.
- 95-3124.1. Expenses for returning fugitives.
- 95-3125. No fee to be paid to public officer procuring surrender.
- 95-3126. Receiving fee for services in arresting fugitives.
- 95-3127. Immunity from service of process in certain civil actions.
- 95-3128. Written waiver of extradition proceedings.
- 95-3129. Nonwaiver by this state.
- 95-3130. No immunity from other criminal prosecutions while in this state.
- 95-3131 to 95-3136. [Transferred from Title 94.]

95-3101. Definitions. Where appearing in this act, the term “governor” includes any person performing the functions of governor by authority of the law of this state. The term “executive authority” includes the governor, and any person performing the functions of governor in a state other than this state. The term “state,” referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

History: En. 95-3101 by Sec. 14, Ch. 513, L. 1973.

95-3102. Fugitives from justice—duty of governor. Subject to the provisions of this act, the provisions of the constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

History: En. 95-3102 by Sec. 14, Ch. 513, L. 1973.

95-3103. Demand—form. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, except in cases arising under section 95-3106, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the

person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

History: En. 95-3103 by Sec. 14, Ch. 513, L. 1973.

95-3104. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

History: En. 95-3104 by Sec. 14, Ch. 513, L. 1973.

95-3105. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in section 95-3123 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973.

95-3106. Extradition of persons not present in demanding state at time of commission of crime. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 95-3103 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

History: En. 95-3106 by Sec. 14, Ch. 513, L. 1973.

95-3107. Issuance of warrant of arrest by governor—recitals therein. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History: En. 95-3107 by Sec. 14, Ch. 513, L. 1973.

95-3108. Execution of warrant—manner and place thereof. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state.

History: En. 95-3108 by Sec. 14, Ch. 513, L. 1973.

95-3109. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: En. 95-3109 by Sec. 14, Ch. 513, L. 1973.

95-3110. Rights of accused persons—application for writ of habeas corpus. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall be first taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and what he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

History: En. 95-3110 by Sec. 14, Ch. 513, L. 1973.

95-3111. Penalty for noncompliance with preceding section. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience of the last section, shall be guilty of a misdemeanor and, on convic-

tion, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not more than six (6) months, or both.

History: En. 95-3111 by Sec. 14, Ch. 513, L. 1973.

95-3112. Confinement of accused in jail when necessary. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: En. 95-3112 by Sec. 14, Ch. 513, L. 1973.

95-3113. Arrest of accused before making of requisition. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and except in cases arising under section 95-3106 with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 95-3106, has fled from justice, or with having been convicted of a crime in that state and having escaped from bail, probation, or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the

place where the arrest may be made, to answer charge or complaint and affidavit and a certified copy of the sworn charge or complaint or affidavit upon which the warrant is issued shall be attached to the warrant.

History: En. 95-3113 by Sec. 14, Ch. 513, L. 1973.

95-3114. Arrest of accused without warrant therefor. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one (1) year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter this answer shall be heard as if he had been arrested on a warrant.

History: En. 95-3114 by Sec. 14, Ch. 513, L. 1973.

95-3115. Commitment to await requisition—bail. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except, in cases arising under section 95-3106 that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty (30) days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

History: En. 95-3115 by Sec. 14, Ch. 513, L. 1973.

95-3116. Bail—in what cases—conditions of bond. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state.

History: En. 95-3116 by Sec. 14, Ch. 513, L. 1973.

95-3117. Extension of time of commitment adjournment. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of sixty (60) days or a supreme court justice or county judge may again take bail for his appearance and surrender, as provided in section 95-3116, but

with a period not to exceed sixty (60) days after the date of such new bond or undertaking.

History: En. 95-3117 by Sec. 14, Ch. 513, L. 1973.

95-3118. Bail—when forfeited. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

History: En. 95-3118 by Sec. 14, Ch. 513, L. 1973.

95-3119. Persons under criminal prosecution in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: En. 95-3119 by Sec. 14, Ch. 513, L. 1973.

95-3120. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

History: En. 95-3120 by Sec. 14, Ch. 513, L. 1973.

Presence in Demanding State

This section does not prevent inquiry in habeas corpus proceedings brought by

the accused as to whether the accused was in the demanding state at the time of the offense, and the accused should have been allowed to introduce evidence that he was not. State ex rel. Hart v. District Court, 157 M 287, 485 P 2d 698.

95-3121. Alias warrant of arrest. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: En. 95-3121 by Sec. 14, Ch. 513, L. 1973.

95-3122. Fugitives from this state—duty of governors. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the chief executive of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to

some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: En. 95-3122 by Sec. 14, Ch. 513, L. 1973.

95-3123. Application for issuance of requisition—by whom made—contents. I. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the government indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: En. 95-3123 by Sec. 14, Ch. 513, L. 1973.

95-3124. Fugitives from this state—accounts. When the governor of this state, in the exercise of the authority conferred by section 2, article IV, of the constitution of the United States, or by the laws of this state,

demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury.

History: En. 95-3124 by Sec. 14, Ch. 513, L. 1973.

95-3124.1. Expenses for returning fugitives. An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid all actual and necessary expenses incurred in returning the fugitive to this state. Actual and necessary expenses for transportation when a vehicle other than a state vehicle is utilized, shall be calculated at the rate allowed by law for state employees.

History: En. 95-3124.1 by Sec. 1, Ch. 531, L. 1975.

Title of Act

An act providing for the payment of actual and necessary expenses to agents required to return fugitives to this state.

95-3125. No fee to be paid to public officer procuring surrender. No compensation, fee or reward of any kind can be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned in section 95-3124 or for the surrender of the fugitive or for conveying him to this state, or detaining him therein, except as provided for in such section.

History: En. 95-3125 by Sec. 14, Ch. 513, L. 1973.

95-3126. Receiving fee for services in arresting fugitives. Every person who violates any of the provisions of section 95-3125 is guilty of a misdemeanor.

History: En. 95-3126 by Sec. 14, Ch. 513, L. 1973.

95-3127. Immunity from service of process in certain civil actions. A person brought into this state on, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: En. 95-3127 by Sec. 14, Ch. 513, L. 1973.

95-3128. Written waiver of extradition proceedings. Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant

provided for in sections 95-3107 and 95-3108 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 95-3110.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality, to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History: En. 95-3128 by Sec. 14, Ch. 513, L. 1973.

95-3129. Nonwaiver by this state. Nothing in this act contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person from crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, a sentence or punishment for any crime committed within this state, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

History: En. 95-3129 by Sec. 14, Ch. 513, L. 1973.

95-3130. No immunity from other criminal prosecutions while in this state. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: En. 95-3130 by Sec. 14, Ch. 513, L. 1973.

95-3131 to 95-3136. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1101-1 to 94-1101-6. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.

95-3131
95-3132
95-3133
95-3134
95-3135
95-3136

Vol. 8

94-1101-1
94-1101-2
94-1101-3
94-1101-4
94-1101-5
94-1101-6

CHAPTER 32—PROBATION, PAROLE AND CLEMENCY

Section

95-3201, 95-3202. [Transferred from Title 94.]

95-3202.1. Retaking or re-incarceration of parolee or probationer under interstate supervision.

95-3202.2. Hearing officers for interstate cases.

95-3202.3. Notice of allegations—counsel—confrontation of witnesses—record.

95-3202.4. Record of hearing in another state to have effect in Montana.

95-3203. Act, how cited.

95-3204. Board of pardons.

95-3205. Definitions.

95-3206. Orders, records, report.

95-3209. [Transferred from Title 94.]

95-3210. [Transferred.]

95-3213. [Transferred.]

95-3214. Parole authority and procedure.

95-3215. Conditional release.

95-3216 to 95-3218. [Transferred from Title 94.]

95-3220. [Transferred.]

95-3221, 95-3222. [Transferred from Title 94.]

95-3223. Cases of executive clemency.

95-3224. Notice of hearing on applications for executive clemency.

95-3225 to 95-3227. [Transferred from Title 94.]

95-3228. When publication not necessary.

95-3229 to 95-3232. [Transferred from Title 94.]

95-3201. Governor may make interstate compact for control of crime, etc.**Compiler's Notes**

This section was originally numbered 94-7901. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-7901.

NOTE.—Uniform State Law. The following states have enacted the Uniform Act of Out of State Parolee Supervision: Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New

Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

Constitutionality

Requirement that parolee sign waiver of extradition before release to another state was not unconstitutional, and parolee could be detained for parole violation by unauthorized departure from the host state. In re Petition of Schwartz, 154 M 505, 463 P 2d 316, certiorari denied 398 US 913, 90 S Ct. 1413.

95-3202. [Transferred from Title 94.]**Compiler's Notes**

This section was originally numbered 94-7902. Section 2, Ch. 513, Laws of 1973, renumbered it to appear in this title. Be-

cause there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-7902.

95-3202.1. Retaking or re-incarceration of parolee or probationer under interstate supervision. Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or re-incarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this act within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state

shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed fifteen (15) days prior to the hearing and, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or re-incarceration if it appears to the hearing officer or officers that re-taking or re-incarceration is likely to follow.

History: En. Sec. 1, Ch. 75, L. 1973.

Title of Act

An act providing for interstate parole and probation hearing procedures, re-

quiring notice, assistance of counsel, confrontation of witnesses under certain conditions, a hearing record, and authorizing out-of-state hearings.

95-3202.2. Hearing officers for interstate cases. Any hearing pursuant to this act may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

History: En. Sec. 2, Ch. 75, L. 1973.

95-3202.3. Notice of allegations—counsel—confrontation of witnesses—record. With respect to any hearing pursuant to this act, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.

(2) Shall be permitted to consult with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

History: En. Sec. 3, Ch. 75, L. 1973.

95-3202.4. Record of hearing in another state to have effect in Montana. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation

violation hearing held in another state pursuant to a statute substantially similar to this act, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

History: En. Sec. 4, Ch. 75, L. 1973.

95-3203. Act, how cited. This act shall be known and may be cited as the "Parole and Executive Clemency Act."

History: En. Sec. 1, Ch. 153, L. 1955;
amd. Sec. 2, Ch. 380, L. 1975.

Amendments

The 1975 amendment substituted the present title for "Probation, Parole, and Executive Clemency Act."

95-3204. Board of pardons. (1) The board of pardons is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet at least twice each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge.

History: En. Sec. 2, Ch. 153, L. 1955;
Sec. 94-9822, R. C. M. 1947; redes. 95-3204
by Sec. 29, Ch. 513, L. 1973; amd. Sec. 81,
Ch. 120, L. 1974; amd. Sec. 3, Ch. 333,
L. 1975.

Amendments

The 1974 amendment rewrote this section (for former law, see section 94-9822 in bound Volume Eight).

The 1975 amendment substituted "is responsible for executive clemency and parole as provided in this chapter" for "shall administer the executive clemency, probation and parole system, and shall endeavor to secure the effective application and improvement of that system and the laws upon which it is based" in subsection (1); and substituted "twice each month" for "once each month" in subsection (2).

95-3205. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Board" means the board of pardons provided for in section 82A-804.

(2) "Department" means the department of institutions provided for in Title 82A, chapter 8.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department of institutions.

(4) "Executive clemency" refers to the powers of the governor as provided by section 12 of article VI of the constitution of Montana.

History: En. Sec. 3, Ch. 153, L. 1955;
Sec. 94-9823, R. C. M. 1947; amd. Sec.
1, Ch. 73, L. 1973; redes. 95-3205 by Sec.
29, Ch. 513, L. 1973; amd. Sec. 82, Ch. 120,
L. 1974; amd. Sec. 5, Ch. 333, L. 1975.

stitutional reference in subdivision (4) from section 9 of article VII of the 1889 constitution to section 12 of article VI of the new constitution.

The 1974 amendment inserted subdivision (1); and made minor changes in phraseology, punctuation and style.

Amendments

The 1973 amendment changed the con-

The 1975 amendment substituted "chapter" for "act" in the introductory phrase; inserted subdivision (2); deleted a former subdivision (2) which read: "Probation means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of

a crime upon verdict or plea, subject to conditions imposed by the court and subject to supervision of the board upon direction of the court"; and substituted "subject to supervision of the department of institutions" for "subject to its supervision" at the end of subdivision (3).

95-3206. Orders, records, report. Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance of terms of this act. The department of institutions shall keep a record of the board's acts and decisions available to the public. However, all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by the department, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in its discretion, when the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R. C. M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975.

Amendments

The 1974 amendment deleted a former first sentence relating to adoption of an official seal; deleted a second sentence relating to a majority of the board constituting a quorum; substituted "shall be"

for "may be" before "by majority vote" in the present first sentence; substituted "department" for "board" at the beginning of the third sentence; deleted a final sentence relating to the board reporting as provided in section 82-4002; and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "the department" for "any member or employee of the board" near the middle of the section.

95-3207. Repealed.

Repeal

Section 95-3207 (Sec. 5, Ch. 153, L. 1955; Sec. 1, Ch. 122, L. 1957; Sec. 11, Ch. 97, L. 1961; Sec. 10, Ch. 225, L. 1963; Sec. 16, Ch. 237, L. 1967; Sec. 94-9825, R. C. M. 1947; Sec. 29, Ch. 513, L. 1973; Sec. 84,

Ch. 120, L. 1974), relating to the appointment, terms, and compensation of the administrator and employees for administration of the Probation, Parole, and Executive Clemency Act, was repealed by Sec. 17, Ch. 333, Laws 1975.

95-3208. Repealed.

Repeal

Section 95-3208 (Sec. 6, Ch. 153, L. 1955; Sec. 12, Ch. 97, L. 1961; Sec. 94-9826, R. C. M. 1947; redes. 95-3208 by Sec. 29,

Ch. 513, L. 1973), relating to payment of expenses of the board of pardons, was repealed by Sec. 96, Ch. 120, Laws of 1974.

95-3209. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-9827. Section 29, Ch. 513, Laws of 1973 renumbered it to appear in this

title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9827.

95-3210. [Transferred.]

Compiler's Notes

Section 9, Ch. 333, Laws of 1975 renumbered this section as sec. 95-3303.

95-3211, 95-3212. Repealed.**Repeal**

Sections 95-3211, 95-3212 (Secs. 9, 10, Ch. 153, L. 1955), relating to the duties of probation and parole officers and the

conditions of probation and suspended sentences, were repealed by Sec. 17, Ch. 333, Laws 1975.

95-3213. [Transferred.]**Compiler's Notes**

This section was originally numbered 94-9381, Section 29, Ch. 513, Laws of 1973

renumbered it to appear as sec. 95-3213. Sec. 15, Ch. 333, Laws of 1975 renumbered it as sec. 95-3305.

95-3214. Parole authority and procedure. (1) The board shall release on parole, by appropriate order, any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided:

(a) That no convict serving a time sentence shall be paroled until he has served at least one-quarter ($\frac{1}{4}$) of his full term, less good time allowances off, as provided in section 80-1905; except that no convict designated a persistent felony offender under section 95-2206.5 may be paroled until he has served at least one-third ($\frac{1}{3}$) of his full term, less good time allowances off, as provided in section 80-1905. A first offender serving a time sentence may be paroled after he has served, upon his term of sentence, twelve and one-half ($12\frac{1}{2}$) years. A persistent felony offender as defined in section 95-2206.5 may be paroled after he has served, upon his term of sentence, seventeen and one-half ($17\frac{1}{2}$) years.

(b) No convict serving a life sentence shall be paroled until he has served thirty (30) years, less the good time allowances off, as provided in section 80-1905.

(2) Within two (2) months after his admission and at such intervals thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of and physical and mental examinations which have been made.

(3) Before ordering the parole of any prisoner, the board shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

(4) The board may adopt other rules it considers proper or necessary, with respect to the eligibility of prisoners for parole, and the conduct of parole hearings or conditions to be imposed upon parolees. When an order for parole is issued it shall recite the conditions thereof.

History: En. Sec. 12, Ch. 153, L. 1955; Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. Sec. 94-9832, R. C. M. 1947; redes. 95-3214 1975.
by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86,

Amendments

The 1974 amendment inserted "by appropriate order" in the first sentence after "shall release on parole"; substituted "as provided in section 80-1905" in subdivisions (1)(a) and (1)(b) for "as provided in section 80-740"; deleted a second sentence in subdivision (1)(b) which read "All paroles shall issue upon order of the board, duly adopted"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment inserted the exception at the end of the first sentence of subdivision (1)(a) that no convict designated a persistent felony offender may be paroled until he has served at least one-third of his full term, less good time allowances; inserted "A first offender" at the beginning of the second sentence of subdivision (1)(a); added the third sentence of subdivision (1)(a); and increased the required service of a life sentence in subdivision (1)(b) from 25 to 30 years.

DECISIONS UNDER FORMER LAW

Conditions for Parole

Where parolee was ordered not to be found in the company of persons under the age of eighteen and to refrain from being in and around the vicinity of certain grade schools, junior high schools, and high schools under section 95-2206, and

he was further restricted to Silver Bow county, excluding the city of Butte, the latter condition did not violate former section 95-3212 (section 94-9830 in parent volume). In re Petition of Dunn, 158 M 73, 488 P 2d 902.

95-3215. Conditional release. A prisoner on parole who has served one-fourth ($\frac{1}{4}$) of his term or terms, less good time allowances, or a persistent felony offender who has served one-third ($\frac{1}{3}$) of his term or terms, less good time allowances, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less good time allowances as provided in section 80-1905.

History: En. Sec. 13, Ch. 153, L. 1955; Sec. 94-9833, R. C. M. 1947; redes. 95-3215 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 87, Ch. 120, L. 1974; amd. Sec. 4, Ch. 312, L. 1975.

provided in section 80-1905" for "as provided in section 80-740"; and made minor changes in phraseology and punctuation.

The 1975 amendment inserted "or a persistent felony offender who has served one-third ($\frac{1}{3}$) of his term or terms, less good time allowances."

Amendments

The 1974 amendment substituted "as

95-3216. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-9834. Section 29, Ch. 513, Laws of 1973, renumbered it to appear here. Be-

cause there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9834.

95-3217. Persons may be heard—counsel.

Compiler's Notes

This section was originally numbered 94-9835. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9835.

Appointment of Counsel Not Required

There is no constitutional right to counsel at parole revocation hearing, but rather a statutory right under this section,

which by no means requires board to provide counsel for parolee. Petition of High Pine, 153 M 464, 457 P 2d 912.

Right to Counsel and Hearing

Parolee not released on prison furlough as provided under section 95-2217 was not entitled as of right to counsel and hearing before district court regarding parole violation, since neither is required under this section. Petition of Osier, 156 M 165, 477 P 2d 344.

95-3218. [Transferred from Title 94.]**Compiler's Notes**

This section was originally numbered 94-9836. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Be-

cause there has been no change in text, the section is not reprinted here, but may be found in bound Volume Eight as sec. 94-9836.

95-3219. Repealed.**Repeal**

Section 95-3219 (Sec. 17, Ch. 153, L. 1955), authorizing the board of pardons to make rules for the conduct of parolees,

and for their investigation and supervision, was repealed by Sec. 17, Ch. 333, Laws 1975.

95-3220. [Transferred.]**Compiler's Notes**

Section 13, Ch. 333, Laws of 1975, renumbered this section as sec. 95-3308.

95-3221, 95-3222. [Transferred from Title 94.]**Compiler's Notes**

These sections were originally numbered 94-9839 and 94-9840. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not

reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3221	94-9839
95-3222	94-9840

95-3223. Cases of executive clemency. The board shall investigate and report to the governor with respect to all cases of executive clemency. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955; Sec. 94-9841, R. C. M. 1947; amd. Sec. 2, Ch. 73, L. 1973; redes. 95-3223 by Sec. 29, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "executive clemency" at the end of the first sentence for "pardons, remissions of fines and forfeitures, and commutations of punishment after conviction and judgment for any offenses committed against the criminal laws of this state."

Compiler's Notes

The previous text of this section may be found under sec. 94-9841 in bound Volume Eight.

95-3224. Notice of hearing on applications for executive clemency. After the board has duly considered an application for executive clemency, and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for Executive Clemency concerning _____, a convict confined in the State Prison (or to one _____, who has been found guilty of an offense

committed against the laws of the state), who was convicted of the crime of committed at, in the County of, State of Montana, on the day of, 19....., and sentenced for a term of years.

"Therefore, be it ordered that the day of, 19....., be set apart for the consideration of said Executive Clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon or reprieve, commutation, restoration of citizenship, remission or suspension of fine or forfeiture are hereby notified to be present at o'clock of said day, at

"Further, ordered that a copy of this order be printed and published in the (here insert name of some newspaper of general circulation in the county where the crime was committed) a daily (or weekly) newspaper printed and published at in the county of, once each week for two weeks beginning,, 19....., and ending"

History: En. Sec. 22, Ch. 153, L. 1955; Sec. 94-9842, R. C. M. 1947; amd. Sec. 3, Ch. 73, L. 1973; redes. 95-3224 by Sec. 29, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "or reprieve, commutation, restoration of citizenship, remission or suspension of fine or forfeiture" for "(or commutation, remission of the fine or forfeiture)" in the second paragraph of the order.

Compiler's Notes

The previous text of this section may be found under sec. 94-9842 in bound Volume Eight.

95-3225 to 95-3227. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-9843 to 94-9845. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not

reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3225	94-9843
95-3226	94-9844
95-3227	94-9845

95-3228. When publication not necessary. No publication need be made as provided in sections 95-3224, 95-3225, and 95-3226, in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within ten (10) days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955; Sec. 94-9846, R. C. M. 1947; amd. and redes. 95-3228 by Sec. 28, Ch. 513, L. 1973.

Amendments

The 1973 amendment renumbered this section; and substituted the reference to sections 95-3224, 95-3225, and 95-3226, for a reference to sections 94-9842, 94-9843 and 94-9844.

Compiler's Notes

The previous text of this section may be found under sec. 94-9846 in bound Volume Eight.

95-3229 to 95-3232. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered

94-9847 to 94-9850. Section 29, Ch. 513, Laws of 1973 renumbered them to appear

in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3229	94-9847
95-3230	94-9848
95-3231	94-9849
95-3232	94-9850

95-3233. Repealed.

Repeal

Section 95-3233 (Sec. 33, Ch. 153, L. 1955; Sec. 94-9833, R. C. M. 1947; redes. 95-3233 by Sec. 29, Ch. 513, L. 1973), re-

lating to the effective date and application of Chapter 153, Laws of 1955, was repealed by Sec. 96, Ch. 120, Laws of 1974.

CHAPTER 33—PROBATION AND PAROLE (Continued)

Section

95-3301.	Definitions.
95-3302.	Powers of the department.
95-3302.1.	Qualifications of probation and parole officers.
95-3303.	Duties of the department.
95-3304.	Supervision on probation.
95-3305.	Arrest—subsequent disposition.
95-3306.	Supervision on parole.
95-3307.	Parole services.
95-3308.	Return of parole violator.
95-3309.	Cases of juveniles excluded.

95-3301. Definitions. As used in this chapter, unless the context requires otherwise: (1) "Board" means the board of pardons provided for in section 82A-804.

(2) "Department" means the department of institutions provided for in Title 82A, chapter 8.

(3) "Probation" means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department.

History: En. 95-3301 by Sec. 7, Ch. 333, L. 1975. "The provisions of sections 82A-116 through 82A-122 are applicable to this act."

Compiler's Notes

Section 16 of Ch. 333, Laws 1975 read

95-3302. Powers of the department. The department may: (1) appoint probation and parole officers and other employees necessary to administer this chapter;

(2) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

History: En. 95-3302 by Sec. 8, Ch. 333, L. 1975.

95-3302.1. Qualifications of probation and parole officers. Probation and parole officers shall have at least a college degree and shall have received at least some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in section 82A-804 (2) may be substituted for educational requirements at the rate of one (1) year of experience for nine (9) months formal education, if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

History: En. 95-3302.1 by Sec. 4, Ch. 333, L. 1975.

Title of Act

An act to provide qualifications for the board of pardons and place the responsibility for field services staff for probation

and parole in the department of institutions; amending sections 82A-804, 95-3203 through 95-3206, R. C. M. 1947; renumbering and amending sections 95-3210, 95-3213 and 95-3220, R. C. M. 1947; and repealing sections 95-3207, 95-3211, 95-3212, and 95-3219, R. C. M. 1947.

95-3303. Duties of the department. The department is responsible for any investigation and supervision requested by the board or the courts. The department shall:

- (1) Divide the state into districts, and assign probation and parole officers to serve in these districts and courts;
- (2) Obtain any necessary office quarters for the staff in each district;
- (3) Assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;
- (4) Direct the work of the probation and parole officers and other employees;
- (5) Formulate methods of investigation, supervision, recordkeeping, and reports;
- (6) Conduct training courses for the staff;
- (7) Co-operate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;
- (8) Administer the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955; Sec. 94-9828, R. C. M. 1947; redes. 95-3210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 85, Ch. 120, L. 1974; amd. and redes. 95-3303 by Sec. 9, Ch. 333, L. 1975.

Amendments

The 1974 amendment rewrote this section. For former law, see sec. 94-9828 in bound Volume Eight.

The 1975 amendment renumbered this section; deleted the first sentence which

read: "The administrator is the executive officer of the board"; substituted "the department" for references to the administrator; deleted "subject to the direction and supervision of the department under section 82A-108" before "shall" in the introductory paragraph; deleted "subject to the approval of the board" at the beginning of subdivision (1); deleted "assigned to him" at the end of subdivision (4); and made minor changes in phraseology.

95-3304. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct, and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

History: En. 95-3304 by Sec. 10, Ch. 333, L. 1975.

95-3305. Arrest—subsequent disposition.

Compiler's Notes

This section, originally numbered 94-9831 was redesignated as sec. 95-3213 by Sec. 29, Ch. 513, Laws of 1973; and again redesignated to appear here by Sec. 15, Ch. 333, Laws of 1975. Since there has been no change in text, the section is not reprinted here, but may be found in bound Volume Eight as sec. 94-9831.

Parole Violation

This section does not require parolee to be taken before court for complete hearing on parole violation but provides only for persons on probation or on suspended sentence. *Petition of Spurlock*, 153 M 475, 458 P 2d 80.

95-3306. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

History: En. 95-3306 by Sec. 11, Ch. 333, L. 1975.

95-3307. Parole services. To assist parolees the department may, in addition to other services, provide the following:

- (1) employment counseling, job placement, and assistance in residential placement;
- (2) family and individual counseling and treatment placement;
- (3) financial counseling;
- (4) vocational and educational counseling and placement; and
- (5) referral services to any other state or local agencies.

The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

History: En. 95-3307 by Sec. 12, Ch. 333, L. 1975.

95-3308. Return of parole violator. (1) At any time during release on parole or conditional release the department may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the department. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner may, if circumstances warrant, be incarcerated in such institution.

(2) After the arrest of said prisoner, a hearing shall be held within a reasonable time, unless such hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over this hearing. This hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of this hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(3) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. Based on the information given to him, the hearings officer must determine whether there is probable cause to hold the parolee

for the final decision of the board of pardons as specified in section 95-3217.

If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release and this report shall be accompanied by the findings of the hearings officer. Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

(4) A prisoner for whose return a warrant has been issued shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R. C. M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975.

Compiler's Notes

The previous text of this section may be found under sec. 94-9838 in bound Volume Eight.

Amendments

The 1973 amendment substituted "may, if circumstances warrant, be" for "shall remain" in the last sentence of the first paragraph; inserted the second and third paragraphs; substituted the present first sentence of the fourth paragraph for the former sentence; and deleted "or upon an arrest by a warrant as herein provided," from the beginning of the second sentence in the fourth paragraph.

The 1975 amendment renumbered this section; divided the section into subsections; substituted "department" for "board" in subsection (1); and deleted "by the board" after "has been issued" in subsection (4).

95-3309. Cases of juveniles excluded. The provisions of this chapter shall not apply to probation in the juvenile court or to parole from state institutions for juveniles.

History: En. 95-3309 by Sec. 14, Ch. 333, L. 1975.

Repealing Clause

Section 17 of Ch. 333, Laws 1975 read

Admissibility of Suppressed Evidence

Evidence of drugs seized in a search conducted under a defective warrant, although not admissible in prosecution for possession of the drugs, was properly considered in hearing on revocation of parole. *State v. Thorsness*, — M —, 528 P 2d 692.

Appointment of Counsel Not Required

Under this section, parole violator is required to be brought before board for hearing, but court hearing is not required; parole violator does not have constitutional right but has statutory right to an attorney at parole revocation hearing, and board is not required to furnish parolee an attorney during such hearing. *Petition of Wing*, 154 M 501, 464 P 2d 302.

Promptness of Hearing

Where five-month delay by parole board was seemingly caused by parolee being in hospital, requirement under this section that hearing be "prompt" was not violated. *Petition of Spurlock*, 153 M 475, 458 P 2d 80.

"Sections 95-3207, 95-3211, 95-3212, and 95-3219, R. C. M. 1947, are repealed."

MONTANA
STATE LAW LIBRARY

REVISED CODES OF MONTANA

VOLUME 9
1975 Cumulative Pocket Supplement

Indexing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 9 OF THE
1947 REVISED CODES

Edited by

CHARLES B. TURNEY, A.B., LL.B.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



Copyright © 1959, 1961, 1963, 1965, 1967, 1969, 1971, 1973, 1974 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1976 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

INDEX

References are to Title and Section numbers

A

ABORTION

- Counseling service provided resident pregnant women interested in abortion, 69-6907
- completion of counseling not required for abortion, 69-6908
- counselors to be approved by division, 69-6904, 69-6905
 - co-operation with governmental agencies in evaluating and approving counselors, 69-6905
 - criteria for approval of counselors, 69-6905 (1)
 - list of approved counselors to be provided public, 69-6904
 - professions from which approved counselors may be chosen, 69-6905 (3)
- definition of terms, 69-6902
- division of maternal and child health care, duties, 69-6904
 - medical resources to be utilized by division, 69-6905 (4)
 - periodical re-evaluation of counseling services, 69-6905 (5)
- father of unborn child or family members, inclusion in counseling authorized, 69-6907 (3)
- fee for counseling, service without cost to indigents, 69-6907 (4)
- minimum standards provided for, availability not limited, 69-6901, 69-6907
 - minimum services included, 69-6907 (2)
- physician or medical facility to inform patient of counselor availability, 69-6906 (1)
 - reference of patient to counselor, 69-6906 (1)
 - unmarried minor, priority appointment with counselor, 69-6906 (2)
- purpose of counseling, 69-6903
- purpose of law, 69-6901
- Montana Abortion Control Act, 94-5-613 to 94-5-624
 - advertising or solicitation of abortion facilities or of abortifacients prohibited, violation as misdemeanor, 94-5-619
 - citation of act, 94-5-613
 - coercion of woman to have abortion by public officer or employee prohibited, 94-5-616 (4)
 - violation as misdemeanor, 94-5-616 (5)
 - conditions under which abortions may be performed, violation as felony, 94-5-618
 - definition of terms, 94-5-615
 - informed consent required for performance of abortion, 94-5-616
 - abortion necessary to preserve life of mother as exception, 94-5-616 (3)
 - form of consent, 94-5-615 (3), 94-5-616 (6)
 - "informed consent" defined, 94-5-615
 - violation as misdemeanor, 94-5-616 (5)
 - legislative intent, 94-5-623
 - maternal death and complications, reporting, 94-5-621
 - penalties for violation, 94-5-622
 - persons to whom notice to be given, 94-5-616 (2)
 - violation as misdemeanor, 94-5-616 (5)
 - purpose of law, 94-5-614
 - record and report of facilities where abortion performed, 94-5-619
 - refusal to participate in abortion by private facility and person authorized, 94-5-620
 - regulation by department for disposition of dead infants or fetuses, 94-5-617 (4)
 - severability of provision, 94-5-624
 - viable infant prematurely born, causing death of as criminal homicide, 94-6-617 (1)
 - infant becoming dependent and neglected child, exceptions, 94-5-617 (2)
 - use of viable infant for scientific research or experimentation prohibited, violation as felony, 94-5-617 (3) (5)

INDEX

References are to Title and Section numbers

ABORTION (Continued)

- Providing or using drugs or instruments to procure miscarriage, punishment, 94-5-611
- Soliciting and taking of drugs or submitting to operation to procure miscarriage, punishment, 94-5-612

ABSENCE AND ABSENTEES

See MISSING PERSONS

ABSTRACTERS OF TITLE

Board of abstracters

- administrative services provided by department, 82A-1603
 - allocation to department for administrative purposes, 82A-1602
 - appointment, qualifications and terms of members, 82A-1602.1
 - chairman and secretary, election, 66-2103
 - compensation and expenses of members, 66-2104
 - continuation in office of board members, 82A-1606
 - employment of personnel for board, 82A-1604
 - existence and composition of board, 82A-1602.1
 - legal assistance in hearings conducted by board, 82A-1604
 - money received by board, deposit and use, 66-2104
 - register of applicants for registration and certificates kept by board, 66-2105
 - retention of functions by board, 82A-1605
 - rules of board, 66-2103
 - witnesses, compelling attendance, administration of oaths, 66-2103
- Complaint charging violation by holder of certificate of registration, procedure, 66-2115 (2)
- Definition of terms, 66-2101.1

ACADEMY

Law enforcement academy, 75-5201 to 75-5208—See COLLEGES AND UNIVERSITIES, Law enforcement academy

ACCORD AND SATISFACTION

Affirmative defense, M. R. Civ. P., Rule 8(c)

ACCOUNTANTS

See PUBLIC ACCOUNTANTS

ACCOUNTS AND ACCOUNTING

- Conservator, accounting to court, 91A-5-419—See PROTECTIVE PROCEEDINGS
- Guardians, 91A-5-209, 91A-5-312
 - incapacitated persons, 91A-5-312
 - minors, 91A-5-209
- Personal representative, 91A-3-1012—See PROBATE AND ADMINISTRATION PROCEEDINGS, Closing of estate

ACCOUNTS OF PUBLIC OFFICERS AND ENTITIES

Annual audit of governmental entities, 82-4515 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit

ACCOUNTS RECEIVABLE

- Delinquent accounts owing state agencies, collection service for, 84-7101 to 84-7111
- Sale of accounts subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS

ACKNOWLEDGMENTS

- Married persons, 39-108, 39-109, 39-113
 - conveyance acknowledged by married person valid, 39-109
 - form of certificate of acknowledgment, 39-113
 - grant invalid unless properly acknowledged, 67-1603

ACTIONS

Commencement of action by complaint, M. R. Civ. P., Rule 3

INDEX

References are to Title and Section numbers

ACTIONS (Continued)

Dismissal of action

class actions, court approval required for dismissal or compromise, M. R. Civ. P., Rule 23(c)

costs when dismissed action is again commenced, M. R. Civ. P., Rule 41(d)

failure to issue or serve summons as ground, M. R. Civ. P., Rule 41(e)

involuntary dismissal, M. R. Civ. P., 41(b)

voluntary dismissal, M. R. Civ. P., Rule 41(a)

Form of action, M. R. Civ. P., Rule 2

Gambling debt, action on not maintainable, 62-706, 62-724, 62-729

Gambling losses, recovery, 94-8-419 to 94-8-421—See GAMBLING

Married person may sue and be sued, 93-2803

defense in own right or of other spouse neglecting to defend, 93-2804

right to maintain or defend action in own name, 36-110

Offer of judgment before trial, effect on costs, M. R. Civ. P., Rule 68

Poor person may sue or defend without costs, 93-8625

Shareholders' derivative actions, allegations required, M. R. Civ. P., Rule 23(b)

Tort action against employee of governmental entity, joinder of employer required, 82-4323

employee indemnified against money judgment or legal expense, 82-4323 (3)

legislative purpose, 82-4322.1

recovery against governmental entity bar to action or recovery against employee, 82-4323 (2)

Uniform Commercial Code rights and obligations, action to enforce, 87A-1-106

ACTS

Form and procedure for passage of bills, 1972 Const., V, 11—See LEGISLATURE, Bills

ACUPUNCTURE

"Acupuncture" defined, 66-3403 (2)

"Acupuncturist" defined, 66-3403

Board of medical examiners, powers and duties, 66-3405

judicial review of board decisions, 66-3412

Citation of act, 66-3401

Definition of terms, 66-3403

Disciplinary action against licensees, 66-3411, 66-3412

complaint filed by injured person, hearing, procedure, findings, resolution, 66-3411 (2) (3)

judicial review, 66-3412

probation or other disciplinary action authorized, 66-3411 (3)

reinstatement following suspension, 66-3411 (5)

relief afforded by board, 66-3411 (3)

revocation, suspension or refusal to issue license, grounds, 66-3411 (1)

Fees deposited with state treasurer in designated account, disbursement by board, 66-3413

Healing arts practitioners, examination and completion of course required for acupuncture practice, 66-3415

Injunction against unlawful practice, 66-3414

Judicial review of board decisions, 66-3412

Legislative findings and purpose, 66-3402

License required for practice of acupuncture, 66-3404

examination, application, fee, qualifications, scope, 66-3406, 66-3407

re-examination of applicants, 66-3407 (3)

retention of examination papers, confidentiality, destruction, 66-3407 (2)

expiration and annual renewal of license, fee, 66-3410

licensees in military service, exemption from annual renewal fee, 66-3410 (1)

notices given by secretary of board, 66-3410 (2) to (4)

revocation for failure to renew, notice, reinstatement, fee, 66-3410 (3) to (5)

issuance of license, fee, registration, 66-3408

reciprocity with other states, license without examination, fee, 66-3409

"School of acupuncture" defined, 66-3403

Severability of provisions, 66-3417

Violations, penalty, 66-3416

INDEX

References are to Title and Section numbers

ADEMPTION

Inter vivos gift to devisee, requirements for ademption, 91A-2-612
Specific devises, nonademption in certain cases, 91A-2-607, 91A-2-608

ADJUTANT GENERAL

Appointment, 77-117, 82A-1401
Head of department of military affairs, 82A-1401

ADMINISTRATIVE PROCEDURE

Agencies subject to requirements, 82-4202
Appeals from administrative agencies, district court jurisdiction, 1972 Const., VII, 4
Citation of act, 82-4201
Code committee created, appointment and terms of members, election of officers, 82-4203.2
 composition of committee, 82-4203.2
 employees, consultants, or counsel, appointment by committee, 82-4203.4
 expenses of members, reimbursement, 82-4203.3
 meetings of committee, 82-4203.3
 powers of committee, 82-4203.5

Contested cases

 appeals to supreme court, 82-4217
 cross-examination of witnesses, 82-4210
 disqualification of examiner, 82-4211
 documentary evidence, 82-4210
 evidentiary rules, 82-4210
 examiners for conduct of hearings, appointment and powers, 82-4211
 ex parte consultations, restrictions on, 82-4214
 final decisions, form and notice to parties, 82-4213
 findings of fact, basis, 82-4209
 hearing of all parties, 82-4209
 informal disposition permitted, 82-4209
 judicial review of contested cases, 82-4216
 appeal to supreme court, 82-4217
 license proceeding treated as contested case, 82-4215
 notice required before hearing, 82-4209
 official notice of judicially cognizable facts, 82-4210
 proposal for decision, service and arguments on, 82-4212
 public availability of decisions, 82-4213
 record in contested case, contents, 82-4209
 subpoena powers of examiners, 82-4211

Counsel, right to appear by, 82-4221

Declaratory rulings by agencies, 82-4218

Definition of terms, 82-4202

Exempt agencies, 82-4202

Judicial review of contested cases, 82-4216

 appeal to supreme court, 82-4217

License proceedings treated as contested case, 82-4215

Organization of agency to be prescribed by rule, 82-4203

Public participation in operation of agencies, Const., II, 8; 82-4226 to 82-4229

 definition of terms, 82-4227

 judicial enforcement, 82-4229

 legislative findings and declaration, 82-4226

 procedures to be developed by agencies, scope and content, 82-4228

Register of rules and notices, compilation and publication by secretary of state, 82-4206

Repeal of inconsistent provisions, 82-4224

Rules of agencies

 annual review of rules, 82-4204

 code of rules, compilation and publication, 82-4206

 declaratory judgment on validity, 82-4219

 effective date of rule changes, 82-4205

 emergency adoption of rule without notice of hearing, 82-4204

 filing of rules with secretary of state, 82-4205

 format for rules prescribed by secretary of state, 82-4205

INDEX

References are to Title and Section numbers

ADMINISTRATIVE PROCEDURE (Continued)

Rules of agencies (Continued)

- hearings before action on rules, 82-4204
- judicial notice of rules, 82-4208
- legislative review and repeal of rules, 82-4203.1
- model rules prepared by attorney general, 82-4203
- notice of proposed action on rules, 82-4204
- petition for rule changes, 82-4207
- practice rules to be adopted, 82-4203
- publication of rules, 82-4206
- public inspection, rules available for, 82-4203
- reference of proposed rules to administrative code committee, 82-4204 (1) (c)
- register of rules maintained by secretary of state, 82-4205
- repetition of statutory language to be avoided, 82-4204
- scope of rules adopted, 82-4203

Service of process in agency proceedings, 82-4222

Severability of provisions, 82-4225

Subpoena power of agencies conducting proceedings, 82-4220

Subsequent legislation, effect, 82-4223

Supplemental nature of requirements, 82-4223

ADOPTION

See also CHILD ADOPTION AGENCIES in bound Volume 9

Adopted person inherits as child of adopting parent, 91A-2-109

Adults, procedure for adoption, 61-140

Birth certificate, issuance of substitute on adoption, 69-4420

recording of substitute certificate, 69-4421

restoration of original certificate on annulment of adoption, 69-4421

Hard-to-place children, 71-1801 to 71-1805

agency having custody to exhaust all possible attempts for permanent adoption, 71-1802

department of social and rehabilitation services to administer law, 71-1803

rules and regulations, 71-1804

financial assistance for prospective adoptive parents, 71-1801

amount of assistance, 71-1804

county to reimburse state for half of assistance, 71-1805

"hard-to-place child" defined, 71-1802

purpose of law, 71-1801

Interstate compact on placement of children, 10-1401 to 10-1409—See CHILDREN AND MINORS, Interstate compact on placement of children

Investigation by department of social and rehabilitation services, 61-209

Minor natural parent, right to relinquish child for adoption, 61-218

Reports of county clerk to department, 69-4433

Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

Service of process on natural parents, 61-211

ADULTERATION

Food, drugs and cosmetics, 27-701 to 27-723—See FOOD AND DRUGS, Food, Drug and Cosmetic Act

ADULTS

Person eighteen years of age or older is adult for all purposes, 1972 Const., II, 14

minors entitled to all rights not specifically precluded, 1972 Const., II, 15

ADVANCEMENT

See GIFTS

ADVERTISING

Consumer loan licensees, limitations on, 47-219

False advertising as deceptive business practice, punishment, 94-6-308—See DECEPTIVE PRACTICES

Flag desecration, 94-7-502

Highways, advertising along interstate and primary systems, 32-4715 to 32-4728—See HIGHWAYS, BRIDGES AND FERRIES, Outdoor advertising regulation

INDEX

References are to Title and Section numbers

ADVISORY COUNCILS

Creation, organization and functions, 82A-110

AERONAUTICS

- Airport passenger service charge authorized, 1-1002
 - amount and limit of charge, 1-1002 (1)
 - collection of service charge, 1-1002 to 1-1005
 - carrier collecting charge, contract, return, remittance, 1-1002, 1-1003
 - city, county or airport authority collecting charge, 1-1002 (1)
 - civil proceedings for collection of charge authorized, 1-1004
 - fee for collection by carrier, 1-1005
 - deposit of charges in airport fund, expenditure, 1-1002
 - one daily charge as limit, 1-1005
 - "passenger air carrier" defined, 1-1001
 - refusal of passenger to pay charge as misdemeanor, punishment, 1-1004
- Airports or restricted landing areas, certificate of approval required, 1-304
- Board of aeronautics, existence and composition, qualifications of members, 82A-905
 - allocated to department for administrative purposes, 82A-905 (3)
 - designated as quasi-judicial board, 82A-905 (4)
 - expenses, source of payment, 1-501
 - meetings of the board, 1-203
- City and county establishment of airports
 - acquisition of land for airports, 1-801
 - annual reserve fund for maintenance and improvements authorized, 1-804
 - creation of board to govern airport, 1-803
 - department of highways assisting municipalities in constructing roads to airports, 1-807
 - eminent domain, power to exercise, 1-802
 - expenses, how defrayed, 1-803
 - land deemed acquired for public use, 1-802
- Contracts for air navigation facilities made by department, 1-205
- Department of community affairs
 - administrative expense, payment, 1-501
 - aircraft, airmen, airports and air instruction, power to regulate, 1-301
 - assistance and technical services for aeronautical needs offered to municipality, 1-204.3
 - construction of airport under powers of airport authority, 1-902
 - federal aid to municipal or regional authority, department as agent, 1-915
 - income from operations, disposition, 1-903
 - operational control of airport, 1-903
 - co-operation with federal agencies, 1-204.1
 - air navigation facilities, acquisition, construction, and operation, 1-205
 - compliance with federal law for expenditures of money, 1-205
 - conferences and joint hearings, 1-204.1
 - records, services, and facilities, reciprocal use by department and federal agencies, 1-204.1
 - reports to federal agency on accidents, penalties for violations, and regulatory action, 1-204.1
 - federal aid, acceptance authorized, disposition, 1-205
 - contracts for federally financed air navigation facilities, 1-205
 - department as agent for municipalities, 1-205, 1-818
 - investigations and hearings by department, 1-204.4
 - reports of investigations and hearings, use limited, 1-204.4
 - rules, insurance of commercial air operators, 1-319
 - rules, orders, and standards, adoption, 1-204.2
 - conformity with federal legislation and rules, 1-204.2
 - enforcement by department and public officers, 1-204.4
- Enforcement of provisions, 1-204.4
- Gasoline distributor's license tax, amount, 84-1847
- Injunction to enforce aeronautics laws, use by department, 1-204.4
- Insurance required of commercial air operators, 1-314
 - amount set by department, 1-315

INDEX

References are to Title and Section numbers

AERONAUTICS (Continued)

Insurance required of commercial air operators (Continued)

- continuation in force required, 1-318
- evidence of insurance deposited with department, 1-316
- violations of act as misdemeanor, 1-320

Intrastate air carriers, certification and regulation by board, 1-323

appeal of board determinations, 1-323.6

certificates of public convenience and necessity required, procedure for issuance, 1-323.1

amendment or revocation for cause, 1-323.3

suspension for federal violation, 1-323.3

transfer and combination, 1-323.2

definition of terms, 1-322.1

discontinuance of service, 1-323.4

enforcement by department, 1-323.6

federally certified carriers exempt, 1-322

hearing vacated in absence of protest or request, 1-324

insurance of air carrier, regulations set by board, 1-323.5

notice of hearing, 1-324

occasional operators between terminal points exempt, 1-322

through and joint rates, establishment, 1-323.4

violations, 1-323.6

Joint operations board, compensation and expenses of members, 1-821 (c)

Landing without consent of landowner prohibited, exception, 1-603

Municipal and regional airport authorities

acquisition of property, powers of authority, 1-909

eminent domain proceedings, 1-910

public purpose for acquisition, 1-919

bonds of authority, procedure, terms and conditions, 1-912

tax revenues, pledge to bond payment, 1-916

compensation and expenses of commissioners 1-908

concession contracts for airport supplies and services, 1-913

contracts and leases for use and operation of airport, 1-913

corporate powers of authority, 1-909

county tax levy for support of airport, 1-917

creation and composition of municipal authority, 1-904

creation and composition of regional authority, 1-905

definition of terms, 1-901

department as agent for receipt of federal aid, 1-205

department exercising powers of authority, 1-902

income from operation, deposit and expenditure, 1-903

operational control of airport, 1-903

disposal of airport property, 1-911

eminent domain proceedings, 1-910

adjoining state or governmental agency exercising powers, 1-922

public purpose for acquisition, 1-919

employment of personnel, 1-908

exemption of property and income from taxation, 1-920

existing airports, power to acquire, 1-909

eminent domain proceedings, 1-910

extraterritorial airports, 1-922

federal and state aid, acceptance and use, 1-915

hearing required for creation of regional authority, 1-905

interstate agreements for airport operation, 1-922

joint exercise of powers by two or more public agencies, 1-918

interstate agreements, 1-922

meetings of commissioners, 1-908

municipal assistance to airport, 1-921

officers of authority, 1-908

operational contracts for airport, 1-913

powers of authority in general, 1-909

incidental and supplemental powers, 1-923

powers vested in commissioners, 1-908

public purpose in airport development, 1-919

INDEX

References are to Title and Section numbers

AERONAUTICS (Continued)

Municipal and regional airport authorities (Continued)

- rules and regulations for airport operation, 1-914
- sale of airport property, 1-911
- severability of provisions, 1-927
- short title of chapter, 1-925
- sinking funds for repair, maintenance and capital outlays, accumulation, 1-906
- supplemental powers of authority, 1-923
- taxing power of authority, 1-909
 - certification of levy, collection and use of revenue, 1-916
 - county levy for support of airport, 1-917
- water ports, power to acquire and construct, 1-909
- zoning powers of authority, 1-909
 - municipal zoning powers preserved, 1-924

Reckless flying prohibited, 1-603

Registration of aircraft, 1-325, 1-326

- aircraft for which registration not required, 1-325 (1)
- county registration as property, taxation, 1-325 (2) (e)
- department registration, fee, exempt aircraft, 1-325 (1)
- late registration, evasion, or false registration statement, penalty, 1-326

State airplanes, department as custodian, 1-1101

- capital fund for new equipment, 1-1102, 1-1104
 - funds from general fund budget, 1-1104
- charges to state agencies for use, 1-1102
- deficit from operations, provisions in general fund budget, 1-1103
- federal aid eligibility of agencies not impaired, 1-1105
- rules, power to make and enforce, 1-1102
- severability of provisions, 1-1105

Unauthorized use of aircraft as criminal offense, punishment, affirmative defense, 94-6-305

AGE

Discriminatory practices because of age unlawful, 64-304 to 64-312—See CIVIL RIGHTS, Discriminatory practices "age" defined, 64-305 (1)

Person eighteen years of age or older is adult for all purposes, 1972 Const., II, 14 minors entitled to all rights not specifically precluded, 1972 Const., II, 15

AGED PERSONS

Center for the aged, 80-2501 to 80-2503—See CENTER FOR THE AGED

Foster family care homes for aged or disabled adult persons, 71-2304 to 71-2307— See SOCIAL SERVICES, Aged persons and disabled adults

Geriatric patients to receive care and treatment in community nursing homes, 80-2413, 80-2414—See SOCIAL SERVICES, Geriatric patients

Problems of aging, functions of department of social and rehabilitation services, 71-2301 gifts and federal grants, acceptance by department authorized, deposit and use, 71-2302

Protective services, 71-1914 to 71-1919—See SOCIAL SERVICES, Aged persons or disabled adults

Recreational and educational activities of the elderly, local tax levy for, 71-1701

AGENCY

Uniform Commercial Code supplemented by general principles of law, 87A-1-103

AGRICULTURAL EXPERIMENT STATION

Director's responsibility, 75-8411.1

Establishment under state university, 75-8411

Experimental farms, funds available for purchase, 75-8606

Facilities included in station, 75-8411

Federal acts, acceptance of terms, 75-8603, 75-8604

- appropriated funds, acceptance and accounting for, 75-8605

Federal grants and cooperative research studies, 75-8411.6

Gifts and donations to station, acceptance, 75-8411.5

INDEX

References are to Title and Section numbers

AGRICULTURAL EXPERIMENT STATION (Continued)

- Grain and seed laboratory, establishment and purpose, 75-8411.4
- Income of station, deposit and use, 75-8411.7
- Purpose of station, 75-8411
- Research centers, establishment and location, 75-8411.2
- Wool laboratory, establishment and purpose, 75-8411.3
- functions and operations, 75-8607

AGRICULTURE

- Agricultural marketing co-ordination, 3-3001 to 3-3004
 - co-operation, 3-3004
 - definitions, 3-3002
 - duties, 3-3003
 - purpose of act, 3-3001
- Agricultural seeds—See SEEDS
- Apiaries—See APIARIES
- Apples
 - boxes for apples, size and marking, 3-3405, 3-3406
 - bulk apples, designation of grade, 3-3404
 - certification of grade and pack, fee, 3-3401
 - markings required on containers of apples for sale, 3-3403
 - packed for sale, inspection and certification, 3-3401
 - penalty for violation, 3-3407
 - standard grades prescribed, tolerance allowed, 3-3402
- Appropriations for protection, enhancement and development of agriculture, 1972 Const., XII, 1
- Barberry control and destruction, departmental duties, 3-1002
- Bean warehousemen, license required, 3-704
 - bailment created by storage of beans, 3-712
 - grade and quantity to be kept equal to outstanding certificates, failure as conversion, 3-712
 - records and reports required of warehouseman, 3-713
- Bees—See APIARIES
- Coloration of wheat, oats, rye or barley
 - required when products treated with injurious or toxic substances, 94-35-271.1, redes. 3-236
 - sale or offering for sale in violation of act prohibited, 94-35-271.2, redes. 3-237
 - violation of act requiring coloration, penalty, 94-35-271.3, redes. 3-238
- Commercial feeds, 3-2025 to 3-2039
 - adulterated feed, definition, 3-2030
 - prohibition of adulteration or manufacture or distribution of adulterated feed, 3-2031
 - annual publication by department, contents, 3-2039
 - co-operation with other agencies, 3-2038
 - custom-mixed feed exemptions, 3-2027, 3-2028
 - definition, 3-2025 (8)
 - document to accompany delivery, contents, 3-2028 (2)
 - labeling exemption, 3-2028 (1)
 - registration exemption, 3-2027 (2)
 - definition of terms, 3-2025
 - department of agriculture to administer law, 3-2026
 - enforcement of law by department, 3-2035, 3-2036
 - embargo of feed in violation, 3-2036 (1)
 - inspection, sampling and analysis authority, 3-2035
 - seizure of feed in judicial proceedings, 3-2036 (2)
- fees
 - administration of act as purpose of fees, 3-2033
 - deposit of fees in earmarked revenue fund, 3-2033
 - failure to pay inspection fees as violation, 3-2031
 - inspection fees, 3-2032
 - permit fees, 3-2027 (1)
 - registration fees, 3-2027 (2)

INDEX

References are to Title and Section numbers

AGRICULTURE (Continued)

Commercial feeds (Continued)

- inspection by department authorized, scope, 3-2035
- fees, 3-2032
- violation of confidentiality as misdemeanor, penalty, 3-2037 (6)
- labeling requirements, custom-mixed feed exempt, 3-2028
- misbranded feed, definition, 3-2029
 - prohibition of misbranding or manufacture or distribution of misbranded feed, 3-2031
- permit required for manufacture or distribution of commercial feed, 3-2027 (1)
 - annual statement required of permit holder, contents, 3-2032 (2)
 - application, fee, cancellation, 3-2027 (1)
 - cancellation for cause by department, 3-2027 (1)
 - payment of inspection fees by holder, penalty for delay, 3-2032 (2) (a)
 - pet or specialty pet foods exempt, 3-2027 (1)
 - records and reports required of holder of permit, 3-2032
 - transfer of permit prohibited, 3-2027 (1)
- pet foods
 - definitions, 3-2025
 - permit not required for distribution, 3-2027 (1)
 - registration required, fee, 3-2027 (2)
- prohibitions generally, 3-2031
- refusal or cancellation of registration, grounds, hearing, 3-2027 (3)
- registration of commercial feed required of distributors, 3-2027
 - application, fees, issuance of certificate of registration, 3-2027 (2)
 - custom-mixed feed exempt, 3-2027 (2)
 - pet food, fee, 3-2027 (2)
 - refusal or cancellation of registration, 3-2027 (3)
 - registration continuous upon payment of annual fee, 3-2027 (2)
- rules, adoption in conformity to federal law, procedures, 3-2034
- violations, civil and criminal remedies, 3-2037

Commercial fertilizers

- cancellation or refusal of registration or licenses, grounds, hearing, 3-1724
- definition of terms, 3-1714.2
- deposit and use of fees collected, 3-1717.1 (4)
- educational and experimental programs, 3-1731
 - advisory committee, appointment, terms, composition, 82A-513
 - meetings and functions of committee, 3-1734
 - allocation of revenue from assessments, 3-1730
 - assessment on fertilizer to fund program, 3-1729
 - goals of program, 3-1731
- embargo order issued by department against fertilizer or soil amendment believed to be in violation, 3-1725.1
- fees for inspection, 3-1717.1
- guaranteed analysis regulation, 3-1714.3
- inspection, sampling, analyzing, and testing of fertilizers and soil amendments, 3-1718
 - sample found subject to penalty or legal action, notice to registrant, when report becomes official, 3-1718 (4)
- labeling fertilizer and soil amendment distributed in state, 3-1716.1
- license required for each facility of distributor in state, application, fee, 3-1715.1 (4)
- misbranding and adulteration prohibited, 3-1720.1
- penalties assessed for plant food deficiencies, amount, payment to consumer, appeal, 3-1726.1
- publications of department, 3-1722
- registration of brands, grades, and soil amendments required of manufacturer, application, fee, 3-1715.1
- reports of distributors
 - confidentiality, published data not to disclose details of operation of business, 3-1721.1 (1)
 - failure to file accurate report as violation, punishment, 3-1721.1
 - inspection and audit of reports, 3-1721.1 (2)

INDEX

References are to Title and Section numbers

AGRICULTURE (Continued)

Commercial fertilizers (Continued)

- rules, adoption by department authorized, procedure, 3-1723.1
- sale and exchange between manufacturers and manipulators authorized, 3-1728
- seizure and condemnation of fertilizer and soil amendment not in compliance, disposition, 3-1725.1 (2)
- soil amendments to guarantee minimum quantities of each active ingredient, 3-1714.3
- violations, notice, hearing, disposition, appeal, 3-1727

County agricultural resources, appropriation of money by county commissioners for advertising authorized, 16-1105

Cropland spraying program, 3-3501 to 3-3506

- assessment of landowners, computation and collection, 3-3505
- "cropland" defined, 3-3501
- county plans, approval by department, 3-3503
- county programs authorized, 3-3503, 3-3504
- definition of terms, 3-3501
- exclusion of landowners upon petition, procedure, 3-3504 (2)
- financing of program, apportionment of costs, 3-3504
 - county conducting program, payment of costs, 3-3504 (4)
 - department conducting program, payment of costs, 3-3504 (3)
 - maximum cost agreed to between department and county, 3-3504
- insect evaluation committee appointed in affected counties, composition, duties, 3-3504 (2)
 - meeting, called by committee of producers and landowners for approval or rejection of program, 3-3504 (2)
- powers and duties of department, 3-3502, 3-3503
- "department" defined, 3-3501 (4)
- rangeland spraying program, agreement with federal government authorized, 3-3506

Dairies and dairy products—See DAIRIES AND DAIRY PRODUCTS

Department of agriculture

- appeal from department decision in commercial fertilizer cases, 3-1727
- barberry control and destruction, duties, 3-1002
- commercial fertilizer, inspection, sampling, analysis, 3-1718—See Commercial fertilizers, above
- constitutional authority, 1972 Const., XII, 1
- definition, 3-106.1
- insect pests and bacterial diseases of plants, investigation and control by department, 3-1106
- powers and duties, 3-107
- reorganized department, 82A-301 to 82A-304—See REORGANIZATION OF STATE GOVERNMENT, Department of agriculture

Eggs and egg dealers

- fees, disposition of, 3-2302, 3-2315
- revocation of license, 3-2314
- rules, adoption by department of livestock, 3-2310

Fruit pest control

- disinfection and destruction of packages and other materials, 3-1103
- investigations by department of agriculture, 3-1106

Fruits and vegetables, penalty for importation of infected fruits and vegetables, 3-1309

Grading and branding of farm products, 3-1404

Grain grade standards set by department, 3-209

Grain inspectors, samplers and weighers provided by department, qualifications, 3-205

- appointment of inspectors, duties, 3-211
- removal for misconduct, 3-215

Grain merchandisers, license required, 3-228.2

- application for license, contents, 3-228.2 (2)
- bond required for issuance or renewal of license, amount, scope, 3-228.5
- certificate of authority in addition to license may be required, 3-228.2 (1)
- definition of terms, 3-228.1
- exemptions from licensing requirement, 3-228.2 (6)
- expiration of license, 3-228.2 (5)

INDEX

References are to Title and Section numbers

AGRICULTURE (Continued)

Grain merchandisers (Continued)

- fee for license, 3-228.2 (3)
 - deposit of fees in general fund, 3-228.2 (4)
- injunction available for violation, 3-228.8**
- insurance required of public warehouseman, 3-228.6
- nonresident licensee, appointment of process agent, 3-228.4
- separate license for each place of business required, 3-228.2 (2)
- suspension or revocation of license, grounds, 3-228.3
- vehicles or vessels used to be noted on application, 3-228.2 (2)
- violation as misdemeanor, punishment, 3-228.7

Grain testing, fees and charges, 3-233

- protein testing laboratory maintained by department, 3-232.1
 - certification of grade or protein content, 3-232.1
 - manner of making test, certificate of result, fee, 3-232.2
 - other testing laboratories, standard determined by department, 3-232.1
 - penalty for violation, 3-232.3

Grain warehousemen

- bailment, possession of warehouseman construed as, 3-226
- definition of terms, 3-201
- judicial process for debts of warehouseman, exemption from, 3-226
- penalty for false report or failure to file reports, 3-227
- reports to commissioner, 3-227
- sampling wheat for protein test, 3-232.2

Hours of labor, agriculture employment excepted from maximum hours provision, 1972 Const., XII, 2

Itinerant merchant's license from department of agriculture required, 3-3205

- administrative rules, department to adopt and enforce, 3-3211
- affidavit required of persons seeking exemption, 3-3204
- application for license, 3-3206
- carrying of license, 3-3208
- "established place of business" defined, 3-3202
- fee for license, 3-3206
 - disposition of license fees, 3-3213
- issuance of license, 3-3208
- "itinerant merchant" defined, 3-3201
 - persons not included in definition, 3-3203
- license nontransferable, 3-3209
- offending vehicle, custody, 3-3212
- revocation of license, 3-3210
- surety bond required prior to issuance of license, 3-3207

Levies on livestock and commodities for disease control and indemnification, predator control, inspection, protection, research and promotion, 1972 Const., XII, 1

Manufactured dairy products, 3-2404, 3-2488 to 3-24-139—See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products

Montana quality label, procurement and use, fees, 3-2503

Mustard seed

- administration of act by department of agriculture, 3-1906
- contracting in advance to purchase seed crops, license and bond required, fee, 3-1908
 - disposition of license fees, 3-1908 (4)
 - enforcement by department, 3-1909
 - revocation of license for cause, 3-1908 (5)
- foreign material other than dockage, basis and standards for determining, 3-1902

Nurseries and nurserymen

- co-operation and agreement with other governmental agencies, 3-1219
- definition of terms, 3-1201.1
- diseased or infested nursery stock, disinfection or destruction upon order by department, notice, hearing, 3-1201 (3) to (5)
- infestation or disease of nursery stock, notice to department, 3-1203
- inspection required of nursery stock prior to sale or delivery, certificate issued, 3-1201
 - holding produce for inspection authorized, immunity from liability, 3-1209

INDEX

References are to Title and Section numbers

AGRICULTURE (Continued)

Nurseries and nurserymen (Continued)

- inspection required of nursery stock prior to sale (Continued)
 - receiving or accepting uninspected nursery stock, notice to department required, 3-1207
 - request for inspection, payment of costs, issuance of certificate, 3-1201.2
 - sale or delivery prohibited without certificate attached to stock, 3-1205
- license required for each place of business of nurserymen, application, form, fees, 3-1212
 - refusal or revocation of license by department, grounds, 3-1214
 - renewal of license, fee, 3-1213
- menacing infestation or disease, removal or destruction ordered by department, payment of costs, 3-1204
- orders for nursery stock, duplicate copies required, 3-1216
- receiving nursery stock from outside state from unlicensed shipper, inspection required, fee, 3-1216 (2)
- rules and orders of department, compliance required, 3-1202
- shipment of uninspected nursery stock, notice to department, 3-1206
- violation as misdemeanor, penalty, 3-1218

Orchard protection, penalty for violation, 3-1309

Overhead utility lines relocated for purpose of installing agricultural improvement, 24-201 to 24-204—See PUBLIC UTILITIES, Overhead utility lines

Pesticides, 27-213 to 27-245—See PESTICIDES

Produce wholesalers' license from department required, exemptions, 3-3302

- access by department to produce locations, 3-3307
- application for license, contents, bond, duration, fee, 3-3303
 - denial of application, hearing, 3-3304
- complaint against dealer believed in violation, 3-3307
- consignment shipments, duties of consignee, 3-3306
- definitions, 3-3301
- department to co-operate with federal, state and municipal authorities, 3-3310
- disposition of license fees, 3-3311
- enforcement duties of department, 3-3307
- investigative power of department, 3-3307
- penalty for violation, 3-3312
- records required of dealers, 3-3305
- revocation or suspension of license, grounds, procedure, 3-3307
 - judicial review, effect upon license and licensing, 3-3308
- rules, adoption by department, 3-3309
- schedule of commissions and charges to be filed, 3-3303

Rodent pest control

- co-operation with federal authorities, 3-2701
- co-operative agreements with counties, associations, corporations, individuals, or governmental agencies, 3-2701
- establishment and operation of program by department of livestock authorized, 3-2701
- expenditures by department of livestock authorized, 3-2702
- purchase and sale of supplies, 3-2704

Rural rehabilitation trust assets, administration, 3-2803

- powers of department of agriculture, 3-2804

Seeds—See SEEDS

Standard grades and brands for Montana farm products

- department of agriculture to establish standard grades, notice required, 3-1403
 - access to premises for inspection, 3-1407
- rules for enforcement and establishment of fees authorized, 3-1408

Wheat and barley research and marketing

- assessment on wheat and barley sold or pledged, 3-2911
 - payment of assessment, 3-2913
 - refund of duplicate assessment, 3-2913
- bonds of employees, 3-2916
- declaration of policy, 3-2902
- definitions, 3-2904
- gifts, grants or donations for research, 3-2915

INDEX

References are to Title and Section numbers

AGRICULTURE (Continued)

- Wheat and barley research and marketing (Continued)
 - invoice delivered by buyer to grower, 3-2913
- Montana wheat research and marketing committee, existence and composition,
 - appointment, qualifications and terms of members, 82A-304
 - allocated to department for administrative purposes, 82A-304 (4)
 - chairman, selection, 3-2908
 - compensation and expenses of members, 3-2906
 - meetings of committee, 3-2908
 - powers, 3-2909
 - removal of member for cause, 82A-304 (3)
- research and marketing account established, receipts, disbursements, 3-2917
- violations of act, penalty, 3-2919

AIR POLLUTION CONTROL

- See also OCCUPATIONAL HEALTH, 69-4206 to 69-4221
- Administration of act by department of health and environmental sciences, 69-3906,
 - 69-3907
 - enforcement of provision, duties of department, 69-3914
 - powers and duties of department, 69-3909.1
- Advisory council, existence and composition, appointment, qualifications and tenure of members, 82A-606
 - functions of council, 69-3908
 - meetings of council, 69-3908 (2)
- Board of health and environmental sciences, powers and duties, 69-3909
 - enforcement duties, 69-3914
- Civil penalties for violation, other remedies unaffected, 69-3921.1
- Definitions, 69-3906
- Emergency procedure, 69-3915
- Exemptions, application for, grounds, fees, 69-3916
- Inspection of premises, power to enter, 69-3912
- Limitation of pollutants emission, adoption of rules, 69-3913
- Limitations on effect of act, 69-3922
- Local air pollution control programs, 69-3919
 - federal aid, 69-3920
 - state aid, 69-3920
- Penalties for violation, 69-3921
- Permits required for installation of machinery and other articles that contaminate air, 69-3911
- Policy and purpose of act, 69-3905
- Prohibition of air contaminating sources, 69-3911
- Records, confidentiality, 69-3918
- Rules, public hearing and judicial review, 69-3917
- Short title of act, 69-3904
- Sources of contamination, classification and reporting, 69-3910
- Taxation, classification of property, 69-3923

AIRPORTS

See AERONAUTICS

ALCOHOL AND DRUG DEPENDENCE

- Department of institutions to administer law, 82A-801.1
 - co-operation with other governmental and private agencies authorized, 80-2704
 - financial assistance, authority to apply for and receive, 80-2704
 - grants of financial assistance to other agencies and organizations authorized, 80-2704
 - powers and duties of department, 80-2703, 80-2704
- Deposit of funds, 80-2707
- Governmental agencies to co-operate with department, 80-2706
- Legislative declaration of purpose and policy, 80-2701
- Treatment of alcoholics and intoxicated persons, 80-2708 to 80-2724—See ALCOHOLICS AND INTOXICATED PERSONS

INDEX

References are to Title and Section numbers

ALCOHOLIC BEVERAGES

- Advertisement concerning liquor prohibited unless permitted by departmental regulations, 4-3-103
- Age required for sale or gift of alcoholic beverage, 4-6-104
 - violations, penalties, 4-6-404
- All-beverages retailers, issuance of license to, 4-4-202
 - application for license, contents and formal requirements, 4-4-301
 - false statements in application as misdemeanor, penalty, 4-4-301
 - fingerprinting of applicants and certain holders of security interests authorized, 4-4-304, 4-4-305
 - investigation by department, 4-4-303
 - notice of application and hearing of protests, publication, 4-4-302
 - business to be carried on in name of licensee, 4-4-207
 - fees for license, 4-4-401, 4-4-403
 - additional annual license fee for all-beverages retailers, 4-4-403
 - lapse of license for nonuse, certain licensees excepted, 4-4-203
 - limited to one license per person, 4-4-207
 - quota limitations on number of licenses issued, 4-4-202 (1) (a)
 - resort area licenses, when issued, departmental determinations, fee, 4-4-204
 - sale of liquor not purchased from state liquor store prohibited, penalty, revocation of license, 4-6-102
 - "liquor" defined, 4-1-107 (9)
- Application of code, 4-1-106
- Bartenders, minimum age, 41-1135
 - violation as misdemeanor, 41-1136
- Beer, possession, manufacture or disposal unlawful other than in manner permitted by code, 4-3-201
 - "beer" defined, 4-1-107 (4)
 - brewers, license required for manufacture and sale of beer in state, 4-4-101
 - application for license, evidence required, 4-4-101
 - beer manufactured in state, persons to whom sold, 4-3-206
 - contracts, agreements or franchises with wholesaler, required contents, 4-3-208
 - copy of agreement, contract or franchise filed with department of revenue, 4-3-212
 - evidence of relationship, 4-3-210
 - injunctive relief against cancellation, 4-3-211
 - wholesaler transferring interest, consent of brewer required, 4-3-209
 - credit extended to retailer, limitations, 4-3-221
 - display of license in place of business, 4-4-101
 - financial interest in retailer prohibited, 4-3-220
 - illegal acts by brewers detailed, 4-3-207
 - inspection of books and premises by department authorized, 4-3-203
 - monthly report required, contents, 4-3-203
 - persons to whom sales may be made by brewers, 4-3-204, 4-3-206
 - refusal of license, fee returned, 4-4-101
 - supplying fixtures and advertising materials to retailer prohibited, exceptions, 4-3-219
 - retailers of beer, license required, 4-4-104—See also Licensing of liquor and beer establishments, below
 - advertising limitations, 4-3-222
 - application for license, 4-4-104
 - closing hours, conduct of other lawful business authorized, 4-3-304, 4-3-305
 - consumption on the premises sales and service authorized, 4-3-302
 - credit extended to retailer, limitations, 4-3-221
 - investigation of applicant by department authorized, 4-4-104
 - issuance of license, 4-4-104
 - municipal regulation of areas where beer may be sold, 4-4-401
 - off the premises consumption sales authorized, 4-3-303
 - persons to whom beer may not be sold, 4-3-301
 - purchase of beer from other than licensed brewer or wholesaler prohibited, 4-3-301
 - sale by department prohibited, 4-3-202

INDEX

References are to Title and Section numbers

ALCOHOLIC BEVERAGES (Continued)

Beer, possession, manufacture or disposal (Continued)

- sale of beer by brewer to licensed wholesaler authorized, 4-3-204
 - licensed brewer manufacturing beer in state, persons to whom sale may be made, 4-3-206
 - sale or disposition by common carrier unlawful unless acquired from licensed brewer or wholesaler, 4-3-104
 - wholesalers of beer, license required, 4-4-103
 - application for license, 4-4-103
 - beer manufactured outside state shipped to licensed wholesaler, 4-4-103
 - consumption of beer on wholesaler's premises unlawful, 4-3-216
 - contracts, agreements or franchises with brewer, required provisions, 4-3-208
 - agreements filed with department of revenue, 4-3-212
 - evidence of contractual or franchise relationship, 4-3-210
 - injunctive relief against cancellation, 4-3-211
 - transfer of interest in business, consent of brewer required, 4-3-209
 - credit extension to retailer, limitations, 4-3-221
 - display of license in place of business required, 4-4-103
 - failure to make return or pay tax, penalty, lien, enforcement, 4-3-217
 - financial interest in retailer prohibited, 4-3-220
 - monthly report required of wholesaler, contents, 4-3-213
 - persons to whom wholesaler may sell beer, 4-3-214
 - qualifications for license, 4-4-103
 - records required of wholesaler, inspection by department, 4-4-103
 - sale of beer to public unlawful, 4-3-215
 - seizure of beer unlawfully consigned from outside state, 4-4-103
 - supplying of fixtures or other material to retailers prohibited, exceptions, 4-3-219
 - transfer of license to corporation, requirements, 4-4-103
- Bottle clubs prohibited, definition, 4-6-105
- Closing hours for licensed retail establishments, conduct of other lawful business authorized, 4-3-304, 4-3-305
- Corporation in violation of code, personal responsibility of officer or agent in charge, 4-6-107
- Declaration of policy, 4-1-103
 - federally licensed persons and establishments, 4-1-202
- Definition of terms, 4-1-107
- Department of revenue to administer code provisions, 4-1-301
 - employment of personnel authorized, 4-1-302 (f)
 - expense, debts and liabilities paid from moneys received, 4-1-306
 - functions, powers and duties of department, 4-1-302
 - investigators or prosecuting officers, appointment, compensation, 4-6-201
 - principal office in Helena, 4-1-307
 - property, moneys, and profits as property of state, 4-1-306
 - regulations authorized, scope, specific subjects included, 4-1-303
 - state liquor stores, general control, management and supervision by department authorized, 4-1-301
- Divisions of code, 4-1-105
- Driving under influence and tests for alcohol, 32-2142 to 32-2142.3—See MOTOR VEHICLES, Driving under influence
- Druggist, consumption of alcoholic beverage on premises prohibited, 4-6-106
- Employees of liquor division, restrictions on, 4-1-304, 4-1-305
 - dealing in liquor prohibited, 4-1-305
 - employment by department, 4-1-302 (f)
 - interest in liquor business prohibited, 4-1-304 (1)
 - receiving commission, gift or other remuneration in respect to sales of liquor to division prohibited, 4-1-304
- Enforcement of code provisions, authorized procedures, 4-6-201 to 4-6-404
 - appeal authorized, 4-6-302
 - appointment of investigators and prosecuting officers, 4-6-201
 - common carriers of passengers, 4-6-204, 4-6-210
 - inspection of cars or aircraft, 4-6-204
 - inspection of records, 4-6-210
 - refusal to permit inspection of records unlawful, 4-6-211

INDEX

References are to Title and Section numbers

ALCOHOLIC BEVERAGES (Continued)

Enforcement of code provisions (Continued)

- description of offense in court papers, sufficiency of, 4-6-303
- negative pleading not required in information or complaint, 4-6-304
- examination of licensee's premises by department or sheriff, 4-6-204
- forfeiture of alcoholic beverages lawfully seized by peace officers, 4-6-205, 4-6-206
 - action by department for judicial declaration of forfeiture, evidence, procedure, 4-6-208
 - alcoholic beverage in motor vehicle or vessel, forfeiture of beverage and vehicle or vessel, 4-6-207
 - disposition of forfeited beverage, 4-6-206
- investigators and prosecuting officers, appointment by department authorized, 4-6-201
- jurisdiction of courts, 4-6-301
- premises where liquor illegally sold as public nuisance, misdemeanor, penalty, 4-6-401
 - action to enjoin nuisance, relief afforded, 4-6-402
- proof of violation, sufficiency, 4-6-306
 - analyst's report as prima facie evidence of contents, 4-6-307
 - evidence, sufficiency of, 4-6-305
 - inferences available to court, 4-6-309
 - presumption that beverage is intoxicating in absence of contrary proof, 4-6-308
- search warrant issued by court upon verified information of investigator, 4-6-203
- seizure of alcoholic beverages unlawfully kept, forfeiture to state, 4-6-205, 4-6-206
 - alcohol in motor vehicle or vessel, 4-6-207
 - force may be used in seizure, when, 4-6-208
 - forfeiture of seized beverage or property, 4-6-205 to 4-6-209—See forfeiture of alcoholic beverages lawfully seized, above
 - report of peace officer to department of particulars of seizure, 4-6-209
- Exemption of certain persons, establishments and substances from code provisions, 4-1-202 to 4-1-205
 - federally licensed persons and establishments, 4-1-202
 - health professions, 4-1-204
 - licensed hospital or health care facility, restrictions, 4-1-205
 - proprietary and patent medicines containing alcohol, exceptions, 4-1-203
 - sales to or purchases by department, 4-1-202 (2)
- Expense, debts and liabilities of department paid from moneys received, 4-1-306
- Hotels, restrictions on possessing and consuming liquor in, 4-3-105
- Identification cards issued to persons attaining age of eighteen years, 4-5-101 to 4-5-105
 - appearance of applicant before county clerk and recorder, 4-5-102
 - application for identification cards, evidentiary effect, 4-5-101
 - application forwarded to department of revenue, 4-5-103
 - duties of county clerk and recorder, 4-5-102
 - fee for identification card, 4-5-105
 - forms furnished by department to county clerk and recorder, 4-5-104
 - highway patrol cards issued to persons not holding drivers' licenses, 31-170 to 31-174—See HIGHWAY PATROL, Identification cards
 - preparation and issuance of card, formal requirements, 4-5-103
- Intent and construction of code, 4-1-104
- Investigators and prosecuting officers, employment by department authorized, 4-6-201
- Legislative declaration of policy, 4-1-101 to 4-1-103
 - generally, 4-1-101
 - retail sale of liquor, 4-1-103
 - sale of beer, 4-1-102
- Licenses of department, sale of liquor to, 4-2-204
 - duplicate invoices required, contents, copy to licensee, 4-2-205
- License proceedings, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
- Licensing of liquor and beer establishments, 4-4-101 to 4-4-407
 - all-beverage licenses—See All-beverages retailers, above
 - annual fees for licenses, 4-4-401, 4-4-403
 - all-beverages retailers, additional annual fee, 4-4-403

INDEX

References are to Title and Section numbers

ALCOHOLIC BEVERAGES (Continued)

Licensing of liquor and beer establishments (Continued)

- brewers, 4-4-401
 - resort area licenses, 4-4-204
 - retailers, 4-4-401, 4-4-403
 - special permit fees, 4-4-105, 4-4-106
 - veterans' organizations, 4-4-401
 - wholesalers, 4-4-401
 - wine, sale on premises of beer licensee, 4-4-201 (3)
 - beer manufacturers or importers, application for license, issuance or rejection, 4-4-101
 - maintenance of storage depots by brewers authorized, fee, 4-4-102
 - beer retailers license, application and issuance, display, investigations by department, 4-4-104
 - quota limitations for issuance of beer licenses, 4-4-201
 - beer special permits, when and to whom issued, fee, 4-4-105
 - duration of permits, 4-4-105
 - veterans' organizations, fee, 4-4-105 (2)
 - beer wholesalers, application for license, issuance, display, 4-4-103
 - importation of beer from outside state, requirements, 4-4-103
 - qualifications for license, 4-4-103
 - transfer of license to corporation, 4-4-103
 - common carriers of passengers, issuance of license to, annual fee, 4-4-109
 - contents of license, 4-4-206 (1)
 - expiration and renewal of licenses, 4-4-206, 4-4-404
 - fraternal organizations, special permits to lodges, duration, fee, 4-4-105, 4-4-106
 - license as privilege, criteria for decision on application, 4-4-108
 - personal to licensee, 4-4-206 (2)
 - mortgagee of license, name endorsed on license, 4-4-206
 - municipal and county licenses authorized, maximum annual fee, 4-4-406
 - posting at place of business of licensee required, 4-4-206 (1)
 - public convenience and necessity finding required for issuance of license, 4-4-205
 - proximity of establishment to churches and schools, issuance of license restricted by, 4-4-107
 - revocation, suspension, denial of application or renewal, or reprimand for violations by licensee, assessment of civil penalty, 4-4-402
 - renewal of revoked or suspended licenses, 4-4-405
 - sale of alcoholic beverage without license as felony, punishment, 4-4-407
 - transfer of license, when authorized, 4-4-206 (2) to (4)
 - bona fide sale of business, departmental approval required, 4-4-206
 - new ownership outside quota area, criteria for approval, 4-4-206 (4)
 - personal representative of deceased licensee, transfer in appropriate probate proceedings, 4-4-206 (2)
 - transfer to different premises, circumstances under which permitted, 4-4-206 (3)
 - veterans' organizations, issuance of special permits to, 4-4-105, 4-4-106
 - alcoholic beverage permit, fee, duration, 4-4-106
 - beer permit, fee, duration, 4-4-105
 - quota limitations on beer licensing not applicable, 4-4-201 (1) (a)
 - wine, sale on premises of beer licensee, 4-4-201 (3)
- Liquor dispensed only in accordance with code provisions and regulations, 4-3-101
- Local option upon initiative of county voters authorized, 4-1-206
- Minors, unlawful sale or gift to minor as criminal offense, punishment, 94-5-609 (1) (b)
- Occupant of premises where violation occurred deemed party to offense, 4-6-108
- Package or container of liquor not bearing official seal, possession prohibited, exceptions, 4-3-102
- Persons to whom alcoholic beverage may not be sold or given, 4-3-306
 - minor or other person misrepresenting qualifications, penalty, 4-3-306 (2)
- Persons under eighteen years of age, violations, 4-6-404
- Person under influence of alcohol, providing alcoholic beverage to prohibited, 4-6-103
- Possession of liquor not purchased from state prohibited, exceptions, 4-1-201 (2)
 - not applicable to liquor seized under judicial process, 4-1-201 (3)

INDEX

References are to Title and Section numbers

ALCOHOLIC BEVERAGES (Continued)

- Possession of liquor not purchased from state prohibited (Continued)
 - package or container not bearing official seal, possession prohibited, exceptions, 4-3-102
- Posted price of liquor, sale for less prohibited, 4-3-307
 - refilling or altering contents of liquor bottles prohibited, 4-3-308
- Property, moneys and profits received by department as property of state, 4-1-306
- Purchase and sale, and having possession of liquor for sale, by department authorized, 4-1-302
 - withdrawal of liquor from inventory for purpose other than sale or destruction prohibited, record required, 4-1-304 (5)
- Resort areas, issuance of licenses in, determinations by department, fee, 4-4-204
- Sale of alcoholic beverage without license as felony, punishment, 4-4-407
- Sale of liquor not purchased from state liquor store prohibited, penalty, mandatory revocation of license, 4-6-102
 - commission, gift or other remuneration from seller to employee or member prohibited, 4-1-304 (3)
 - not applicable to sales pursuant to judicial process, 4-1-201 (3)
- Sale or transfer of liquor unlawful except as provided in code, 4-1-201 (1)
- Samples of liquor submitted by sellers for chemical analysis, 4-1-304 (4)
 - forwarding of sample to chemical laboratory for analysis, 4-1-304 (4) (b)
 - record of all samples maintained by division, 4-1-304 (4) (c)
- Severability of provisions, 4-1-106
- Solicitation of orders for sale or purchase of liquor or beer, when unlawful, 4-3-103
- State liquor stores established and maintained by department, 4-2-101
 - agency agreement for operation of store authorized, 4-2-101
 - authorized sales, payment of purchase price required, 4-2-106
 - classification of liquor stores, criteria, 4-2-101
 - conflicting laws repealed, 4-2-203
 - consumption of liquor on store premises prohibited, 4-2-107
 - departmental functions, powers and duties, 4-1-301, 4-1-302, 4-2-101
 - employment of personnel for operation of stores authorized, 4-2-101
 - holidays, sale of liquor prohibited, 4-2-104
 - hours for transaction of business, 4-2-101
 - licensees of department, sale of liquor to, price, cash basis, 4-2-204
 - duplicate invoices required, contents, copy delivered to licensee, 4-2-205
 - liquor made in state, price discount, 4-2-202
 - net operating proceeds paid into state treasury to credit of general fund, 4-1-406
 - place and time for selling liquor, restrictions on personnel, 4-2-105
 - prohibited times for sale of liquor, 4-2-104
 - quantity sales in case lots, reduction of price, 4-2-201
 - regulations, adoption by department authorized, scope, 4-1-303
 - transportation of liquor to or from state store, warehouse or depot authorized, restrictions, 4-2-103
- Taxes levied and collected on sales of liquor and beer, 4-1-401 to 4-1-408
 - beer sales, taxation of, 4-1-404, 4-1-405, 4-1-408
 - allocation of revenue, 4-1-408
 - "beer" defined, 4-1-107 (4)
 - domestic beer, barrelage tax on, 4-1-405
 - imported from without state, 4-1-404
 - common carriers of passengers, payment of excise tax and state markup required, 4-4-110, 4-4-111
 - amount of tax and markup, computation, 4-4-110, 4-4-111
 - report by carriers on forms prescribed by department, 4-4-111 (2)
 - withholding of tax and markup on purchases made within state, 4-4-110 (d)
 - disposition and use of money received by department, 4-1-406
 - excise liquor tax, collection and retention by department, 4-1-403
 - license tax on liquor, rate, distribution of proceeds, 4-1-401
 - deposit and use of apportioned proceeds, 4-1-402
 - "liquor" defined, 4-1-107 (9)
 - penalty for brewers' and wholesalers' failure to pay tax, 4-6-403
 - revenues paid to state treasurer, disposition, 4-1-407
 - wine, amendment of beer license to permit sale of, fee, 4-4-201 (2), (3)

INDEX

References are to Title and Section numbers

ALCOHOLIC BEVERAGES (Continued)

Title and citation of code, 4-1-101

Transfer of alcoholic beverages except as provided by code unlawful, 4-6-101

Violations of code, penalties, 4-6-404

Wage Protection Act for bars and taverns, 41-2001 to 41-2011—See WAGES, Restaurant, Bar and Tavern Wage Protection Act

ALCOHOLICS AND INTOXICATED PERSONS

Acceptance of persons for treatment, rules to be adopted, standards, 80-2714

Administrative Procedure Act applicable, 80-2721

"Alcoholic" defined, 80-2709 (1)

Alcoholism recognized as illness, 80-2708

Definition of terms, 80-2709

Department of institutions to administer law, 80-2710, 82A-801.1

duties of department, 80-2711

powers of department, 80-2710

Emergency commitment of intoxicated persons and persons incapacitated by alcohol, 80-2717

admission of patient to facility, 80-2717 (3)

application for commitment, persons eligible to make, contents, 80-2717 (2)

approval or disapproval of application by administrator, 80-2717 (3), (4)

basis for commitment, 80-2717 (1)

copy of application and written explanation to be provided patient, 80-2717 (6)

discharge of patient upon determination of administrator, 80-2717 (5)

maximum period of detention, 80-2717 (5)

Facilities for treatment, standards established by department, 80-2712, 80-2713

approval of facility by department, 80-2713

revocation, suspension, restricting or refusing approval for failure to meet standards, 80-2713 (5)

approved facility to supply data, statistics, or information upon request, 80-2713 (4)

"approved private treatment facility" defined, 80-2709 (2)

"approved public treatment facility" defined, 80-2709 (3)

correctional institution used as treatment facility prohibited, exception, 80-2712 (3)

injunctive relief against violation, 80-2713 (6)

inspection of facilities to be conducted periodically by department, 80-2713 (2)

warrant authorizing entry and inspection, issuance by district court, 80-2713 (7)

list of approved facilities maintained by department, 80-2713 (3)

"Intoxicated person" defined, 80-2709 (7)

Intoxicated persons and persons incapacitated by alcohol, treatment and services for, 80-2716

admission to facility or referral to another approved facility, 80-2716 (3)

arrest record or criminal charge prohibited, 80-2716 (2)

duties of police, 80-2716

emergency commitment, 80-2717—See Emergency commitment, above

"incapacitated by alcohol" defined, 80-2709 (5)

"intoxicated person" defined, 80-2709 (7)

notice to family or next of kin of admission to facility required, exception, 80-2716 (6)

patient incapacitated by alcohol, maximum period of detention without formal commitment, 80-2716 (4)

patient not admitted or referred to facility, assistance to be given, 80-2716 (5)

Involuntary commitment of alcoholics, 80-2718

"alcoholic" defined, 80-2709 (1)

certificate of physician to accompany petition, exception, 80-2718 (1)

confidentiality of records, disclosure permitted for purposes of research, 80-2719

department of institutions as custodian, 80-2718 (1), (8)

discharge of patient, basis for, 80-2718 (8)

habeas corpus available to person committed, 80-2718 (11)

hearing, notice, procedure, findings, 80-2718 (2) to (4)

rights of patient to be observed, 80-2718 (3)

maximum period of commitment, 80-2718 (6)

INDEX

References are to Title and Section numbers

ALCOHOLICS AND INTOXICATED PERSONS (Continued)

- Involuntary commitment of alcoholics (Continued)
 - order of commitment, prerequisite for issuance, 80-2718 (4)
 - patient to be advised of rights, 80-2718 (9)
 - petition for commitment, persons eligible to file, contents, 80-2718 (1)
 - petition for recommitment, filing, contents, service, 80-2718 (7)
 - private treatment facility, patient transferred to, 80-2718 (10)
 - recommitment, maximum period, 80-2718 (6)
 - hearing, notice, procedure, 80-2718 (7)
 - order of recommitment, basis for, 80-2718 (6), (7)
 - venue of proceedings, 80-2718 (12)
- Legislative declaration of policy, 80-2708
- Local criminal laws, limitations, 80-2723
- Public intoxication not criminal offense, when detention authorized, 80-2724
 - peace officer not personally liable, 80-2724 (3)
- Records of treatment facilities confidential, exception, 80-2719
- Reports required of department, 80-2722
- Treatment program to be established by department, content and scope, 80-2712
- Visitation and communication rights of patients, 80-2720
- Voluntary application by patient or legal representative, 80-2715, 80-2716
 - admission for treatment determined by administrator, 80-2715 (2)
 - admission to facility or referral to another facility, 80-2716 (3)
 - examination of patient by physician to precede admission to facility, 80-2716 (3)
 - intoxicated persons voluntarily seeking emergency treatment, 80-2716 (1)
 - patient leaving facility, duties of administrator, 80-2715
 - refusal of admission, reference to another facility, 80-2715 (2)

ALCOHOLISM SERVICES CENTER

- Location, purpose and functions of center, 80-1705

ALIENATION OF AFFECTIONS

- Acts within state not to give rise to cause of action, 17-1203
- Cause of action abolished, 17-1201
- Litigation and threat of litigation prohibited, 17-1204
- Penalty for bringing action, 17-1206
- Settlements and compromises void, 17-1205

ALIENS

- Machine gun, presumption from possession or use of, 94-8-204
- Qualifications as heir, 91A-2-111

ALTERNATIVE FORMS OF LOCAL GOVERNMENT

See LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT STUDY COMMISSIONS

AMBULANCE SERVICE

- County or municipal service, establishment authorized, 69-3601
 - methods of operation, 69-3602
 - previously existing service unaffected, 69-3603
- License required for operation of service, 69-3606
 - application for license, 69-3606
 - cancellation or denial of license, grounds and procedure, 69-3608
 - co-operative agreements with other agencies, 69-3609
 - definition of terms, 69-3605
 - equipment required of licensees, 69-3609
 - fee for license or renewal, 69-3607
 - other fees superseded, 69-3613
 - hearings on cancellation or denial of license, 69-3608
 - right to hearing, 69-3606
 - subpoena powers of board, 69-3611
 - investigations and inspections by department, 69-3610
 - legislative findings and policy, 69-3604
 - penalty for violations, 69-3612

INDEX

References are to Title and Section numbers

AMBULANCE SERVICE (Continued)

- License required for operation of service (Continued)
 - right to license, 69-3606
 - rules and regulations of department, 69-3609
 - subpoena power of board, 69-3611

AMENDMENTS

- Constitution, 1972 Const., XIV—See **CONSTITUTION; CONSTITUTIONAL AMENDMENTS; CONSTITUTIONAL CONVENTION**

ANCILLARY ADMINISTRATION

- See **DECEDENTS' ESTATES**, Nonresident decedents

ANIMALS

- Baby animals, certain dealings unlawful, 3-2110
 - avicultural breeding and raising, exemption, 3-2110
 - penalty for violation, 3-2111
- Cruelty to animals as criminal offense, punishment, 94-8-106
- Dead animals, unlawful disposition, penalty for violations, 69-4518, 69-4519
- Gate outside city or town, failure to close as criminal mischief, punishment, 94-6-102
- Injury, damage or destruction of another's property causing injury or death of domesticated hoofed animal as criminal mischief, punishment, 94-6-102
- Predatory animals, destruction supervised by department, administration of funds, 46-1903—See **BOUNTIES**
- Roadside menageries or zoos, 26-1205 to 26-1212—See **FISH AND GAME**, Menageries, roadside

ANNEXATION

- Contiguous areas, tracts or parcels of land, annexing to cities, procedure, 11-403, 11-514 to 11-525

ANNULMENT OF MARRIAGE

- See **MARRIAGE AND DIVORCE**, Declaration of invalidity of marriage

APIARIES

- Abandonment of apiary, 3-3105
- "Apiaries" defined, 3-3101
- Conflict between applicants, resolution, 3-3103
- Definitions, 3-3101
- Disposition of fees, 3-3109
- Evidence of registration to be posted, 3-3103
- Forfeiture of location not stocked during season, 3-3105
- Inspection of bees or used bee-keeping equipment transported interstate, 3-3107
- Late registration, penalty, 3-3103
 - notice of delinquent registration, 3-3103
- New locations of apiaries that interfere with established apiaries prohibited, 3-3103
- Notice to apiarists affected by proposed new location, 3-3103
- Order or rule by department effective until reversed or modified by court, 3-3112
- Penalty for violation, 3-3110
- Powers and duties of the department of agriculture, 3-3102
 - burning of infected property, 3-3102
 - disinfection order, 3-3102
 - inspection by department, 3-3102
 - order to transfer colonies, 3-3102
 - quarantine of apiary, 3-3102
- Registration fees, 3-3106
- Registration with department of agriculture, 3-3103
- Relocation of registered apiary, 3-3104
- Separability of act, 3-3111
- Transfer of beekeeper's rights, 3-3104

APPEALS

- Administrative agencies, district court jurisdiction of appeals, 1972 Const., VII, 4

INDEX

References are to Title and Section numbers

APPEALS (Continued)

Briefs filed in supreme court

- amicus curiae briefs, when permitted, M. R. App. Civ. P., Rule 24
 - appellant's brief, contents and arrangement, M. R. App. Civ. P., Rule 23(a)
 - appendices to briefs, when filed, M. R. App. Civ. P., Rule 25(a)
 - arrangement of appendix, M. R. App. Civ. P., Rule 25(c)
 - contents of appendix, M. R. App. Civ. P., Rule 25(b)
 - findings of fact and conclusions of law and opinion of court in nonjury cases, M. R. App. Civ. P., Rule 9(f)
 - costs allowed for briefs, M. R. App. Civ. P., Rule 23(g)
 - cross-appeals, briefs in cases involving, M. R. App. Civ. P., Rule 23(h)
 - dismissal of appeal on failure to file brief, M. R. App. Civ. P., Rule 26(c)
 - exhibits, reproduction in separate volume, M. R. App. Civ. P., Rule 25(d)
 - length of briefs, M. R. App. Civ. P., Rule 23(g)
 - number of copies filed and served, M. R. App. Civ. P., Rule 26(b)
 - parties, references to in briefs, M. R. App. Civ. P., Rule 23(d)
 - record, references to in briefs, M. R. App. Civ. P., Rule 23(e)
 - reply brief, contents, M. R. App. Civ. P., Rule 23(c)
 - respondent's brief, contents, M. R. App. Civ. P., Rule 23(b)
 - statutes, rules and regulations, reproduction in briefs, M. R. App. Civ. P., Rule 23(f)
 - time for filing briefs, M. R. App. Civ. P., Rule 26(a)
 - title of case, statements on cover and first page, M. R. App. Civ. P., Rule 27(c)
 - typewritten briefs, format, M. R. App. Civ. P., Rule 27(b)
 - typographical form of briefs, M. R. App. Civ. P., Rule 27(a)
- Calendar, placement of causes on, M. R. App. Civ. P., Rule 39(a)
- advancement of causes having precedence, M. R. App. Civ. P., Rule 39(c)
 - setting causes for argument, M. R. App. Civ. P., Rule 39(b)
- Constitutional fertilizer decisions, appeal from, 3-1727
- Constitutional questions raised on appeal, notice to attorney general, M. R. App. Civ. P., Rule 38
- Costs on appeal taxed by court, M. R. App. Civ. P., Rule 33(a)
- briefs and appendices, restriction on costs, M. R. App. Civ. P., Rule 33(b)
 - district court costs, M. R. App. Civ. P., Rule 33(c)
 - notation of costs by clerk, M. R. App. Civ. P., Rule 33(f)
 - unnecessary costs not recovered, M. R. App. Civ. P., Rule 33(e)
- Criminal cases, 95-2401 to 95-2430—See CRIMINAL PROCEDURE, Appeals
- review of legal sentences, 95-2211, 95-2501 to 95-2504
- Cross-appeal, reversal on, M. R. App. Civ. P., Rule 14
- Damages for appeal without merit, M. R. App. Civ. P., Rule 32
- Decision on appeal, notice to parties, M. R. App. Civ. P., Rule 35(a)
- Decision subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2
- Dismissal of appeals, effect, M. R. App. Civ. P., Rule 12
- brief, failure to file as ground for dismissal, M. R. App. Civ. P., Rule 26(c)
 - record, failure to transmit as ground for dismissal, M. R. App. Civ. P., Rule 11(c)
 - voluntary dismissal, M. R. App. Civ. P., Rule 36
- District court jurisdiction, 1972 Const., VII, 4
- District courts, appeals to, applicability of rules, M. R. Civ. P., Rule 81(b)
- appellate rules not applicable, M. R. App. Civ. P., Rule 42(b)
 - justices' or police courts, trial of criminal cases on appeal, 95-2009
- Docketing of appeal, M. R. App. Civ. P., Rule 11(a)
- respondent docketing appeal, M. R. App. Civ. P., Rule 11(c)
- Entry and notice of judgments and orders, M. R. App. Civ. P., Rule 30(a)
- Exceptions unnecessary to lay ground work for appeal, M. R. Civ. P., Rule 46
- Executors' and administrators' acts pending appeal validated, M. R. App. Civ. P., Rule 13
- Filing of papers with supreme court, manner of accomplishment, M. R. App. Civ. P., Rule 20(a)
- Guardians' acts pending appeal validated, M. R. App. Civ. P., Rule 13
- Habeas corpus, appeal from order discharging petitioner, 95-2714
- Injunction granted by supreme court on ex parte proceedings, M. R. App. Civ. P., Rule 40
- Interest on judgments, M. R. App. Civ. P., Rule 31
- Intermediate orders and decisions subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2

INDEX

References are to Title and Section numbers

APPEALS (Continued)

- Judgment on appeal, entry by clerk and notice to parties, M. R. App. Civ. P., Rule 30(a)
- transmission to and entry by clerk of district court, M. R. App. Civ. P., Rule 16
- Judgments subject to appeal, M. R. App. Civ. P., Rule 1
- Justices' courts, appeal of criminal cases, 95-2009
- Motions in supreme court, contents and manner of filing, M. R. App. Civ. P., Rule 22
- Notice of appeal filed in district court, M. R. App. Civ. P., Rule 4(a)
 - content of notice, M. R. App. Civ. P., Rule 4(c)
 - form for notice, M. R. App. Civ. P., Appendix of Forms, Form 1
 - joint or separate notice on joint appeals, M. R. App. Civ. P., Rule 4(b)
 - neglect in filing notice, extension of time, M. R. App. Civ. P., Rule 5
 - service of notice, M. R. App. Civ. P., Rule 4(d)
 - time for filing notice, M. R. App. Civ. P., Rule 5
- Oral argument before supreme court
 - agreement of parties to dispense with argument, M. R. App. Civ. P., Rule 29(f)
 - consolidation of cross and separate appeals for argument, M. R. App. Civ. P., Rule 29(d)
 - exhibits, use during argument, M. R. App. Civ. P., Rule 29(g)
 - failure of counsel to appear for argument, M. R. App. Civ. P., Rule 29(e)
 - notice of time and place of argument, M. R. App. Civ. P., Rule 29(a)
 - order and content of argument, M. R. App. Civ. P., Rule 29(c)
 - postponement of argument, request for, M. R. App. Civ. P., Rule 29(a)
 - time allowed for argument, M. R. App. Civ. P., Rule 29(b)
- Orders subject to appeal, M. R. App. Civ. P., Rule 1
- Parties to appeal, designation, M. R. App. Civ. P., Rule 1
 - public officer as party to appeal, M. R. App. Civ. P., Rule 37(c)
 - substitution of parties for death or other cause, M. R. App. Civ. P., Rule 37
- Pauper's form of appeal
 - application to district court to proceed in forma pauperis, M. R. App. Civ. P., Rule 18(a)
 - application to supreme court to proceed in forma pauperis, M. R. App. Civ. P., Rule 18(b)
 - form for application, M. R. App. Civ. P., Appendix of Forms, Form 2
 - typewritten form permitted for papers filed, M. R. App. Civ. P., Rule 18(c)
- Police courts, appeal of criminal cases, 95-2009
- Prehearing conference to simplify issues before court, M. R. App. Civ. P., Rule 28
- Record on appeal, papers and exhibits constituting, M. R. App. Civ. P., Rule 9(a)
 - agreed statement as record on appeal, M. R. App. Civ. P., Rule 9(d)
 - correction of the record, M. R. App. Civ. P., Rule 9(e)
 - dismissal of appeal for failure to file in time, M. R. App. Civ. P., Rule 11(c)
 - fee for filing of record, time of payment, M. R. App. Civ. P., Rule 11(a)
 - filing of record by supreme court clerk, M. R. App. Civ. P., Rule 11(b)
 - modification of the record, M. R. App. Civ. P., Rule 9(e)
 - preliminary hearing in supreme court, transmission of record for, M. R. App. Civ. P., Rule 10(f)
 - retention of record in district court, M. R. App. Civ. P., Rule 10(d)
 - stipulation of parties for retention, M. R. App. Civ. P., Rule 10(e)
 - statement of proceedings in lieu of transcript, preparation and settlement, M. R. App. Civ. P., Rule 9(c)
 - time for transmission of record, M. R. App. Civ. P., Rule 10(a)
 - extension of time, M. R. App. Civ. P., Rule 10(c)
 - reduction of time, M. R. App. Civ. P., Rule 10(c)
 - transcript of proceedings, preparation and certification, M. R. App. Civ. P., Rule 9(b)
 - transmission of record by clerk of district court, M. R. App. Civ. P., Rule 10(b)
- Rehearing, grounds and time for filing petition, M. R. App. Civ. P., Rule 34
- Remittitur to clerk of district court, M. R. App. Civ. P., Rule 16
 - time of issuance, M. R. App. Civ. P., Rule 35(b)
- Removal of papers from clerk's office, restrictions, M. R. App. Civ. P., Rule 39(d)
- Reversal on appeal, remedial powers of supreme court, M. R. App. Civ. P., Rule 15
 - fiduciary acts pending appeal validated, M. R. App. Civ. P., Rule 13
 - opinion to accompany remittitur, M. R. App. Civ. P., Rule 35(b)
 - substantial error required for reversal, M. R. App. Civ. P., Rule 14

INDEX

References are to Title and Section numbers

APPEALS (Continued)

- Rules of Appellate Civil Procedure, Title 93, Chapter 3001
 - application of rules and statutes to appeals to supreme court, M. R. Civ. P., Rule 72
 - citation of rules, M. R. App. Civ. P., Rule 43(a)
 - constitutional authority for adoption, 1972 Const., VII, 2
 - effective date of rules, M. R. App. Civ. P., Rule 43(b)
 - exemption of special statutory proceedings from rules, M. R. App. Civ. P., Rule 42(a)
 - pending proceedings, application of rules to, M. R. App. Civ. P., Rule 43(b)
 - scope of rules, M. R. App. Civ. P., Rule 1
 - statutes superseded by rules, M. R. App. Civ. P., Rules 42(c), 43(c)
 - suspension of rules by supreme court, M. R. App. Civ. P., Rule 3
- Service of papers filed in supreme court required on all parties, M. R. App. Civ. P., Rule 20(b)
 - personal service or mail, M. R. App. Civ. P., Rule 20(c)
 - proof of service, M. R. App. Civ. P., Rule 20(d)
- Stay of judgment or order pending appeal, M. R. App. Civ. P., Rule 7(a)
 - judgments and orders not subject to stay, M. R. App. Civ. P., Rule 7(c)
 - perishable property, sale and deposit of proceeds, M. R. App. Civ. P., Rule 7(b)
- Substantial rights of parties to be considered on appeal, M. R. App. Civ. P., Rule 14
- Supersedeas bond to stay judgment or order pending appeal, M. R. App. Civ. P., Rule 7(a)
 - form for bond, M. R. Civ. P., Appendix of Forms, Form 23
 - justification of sureties on bond, M. R. App. Civ. P., Rule 8(b)
 - liability of surety on bond, enforcement, M. R. App. Civ. P., Rule 8(a)
- Supreme court jurisdiction, 1972 Const., VII, 2
- Tax appeals, 1972 Const., VIII, 7
- Time allowed for proceedings in supreme court
 - computation of days, M. R. App. Civ. P., Rule 21(a)
 - extension of time allowed by court, M. R. App. Civ. P., Rule 21(b)
 - filing of appeal, M. R. App. Civ. P., Rule 5
 - mail service, additional time allowed after, M. R. App. Civ. P., Rule 21(c)
- Tort actions against state, 83-703
- Undertaking for costs on appeal, contents and filing, M. R. App. Civ. P., Rule 6(a)
 - justification of sureties on undertaking, M. R. App. Civ. P., Rule 8(b)
 - liability of surety on undertaking, enforcement, M. R. App. Civ. P., Rule 8(a)
- Uniform Probate Code, statutes and rules applicable to appeals, 91A-1-308
- United States Supreme Court, action on receipt of mandate from, M. R. App. Civ. P., Rule 35(c)
- Verdict subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2

APPEARANCE

Acts constituting appearance by defendant, 93-8505

Criminal cases, appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902

Jurisdiction of person acquired by voluntary appearance in court, M. R. Civ. P., Rule 4B(2)

APPLES

Inspection, grading and packing of apples, 3-3401 to 3-3407—See AGRICULTURE, Apples

APPORTIONMENT

County commissioner districts, area and population apportionment, 16-902.1 to 16-902.5—See COUNTY COMMISSIONERS, Commissioner districts

Legislative and congressional apportionment, Const., V, 14

APPRAISERS

Inventory of decedent estate, contents, valuation by appraisal, filing, copies, 91A-3-706

copy of inventory and statement of value mailed to department of revenue, 91A-3-706

judicial review of appraiser fees, 91A-3-722

INDEX

References are to Title and Section numbers

APPRENTICES

Force used to restrain or correct apprentice, when justified, 94-3-107

APPRENTICESHIP COUNCIL

Abolition of council and transfer of functions, 82A-1002

Appointments and terms of members, 41-1201

Chairman and vice-chairman, 41-1201

Compensation and expenses of members, 41-1201 (d)

Composition of council, 41-1201

Director and staff, appointment, 41-1201

Duties of council, 41-1202

APPROPRIATIONS

Bills, generally, 1972 Const., V, 11

Budget

appropriations not to exceed anticipated revenue, 1972 Const., VIII, 9

governor to submit budget to legislature, 1972 Const., VI, 9

Expenditures, strict accountability of state and local governmental entities, 1972 Const., VIII, 12

appropriation and issuance of warrant required, 1972 Const., VIII, 14

Veto of line items by governor, 1972 Const., VI, 10

ARBITRATION AND AWARD

Affirmative defense, M. R. Civ. P., Rule 8(c)

Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

ARBOR DAY

Date of observance, 75-7407

ARCHAEOLOGICAL SITES

Historic and prehistoric objects and sites on state lands, preservation, 81-2501 to 81-2514—See HISTORIC AND PREHISTORIC STRUCTURES

Legislature to provide for preservation and administration, 1972 Const., IX, 4

ARCHITECTS

Board of architects

allocation to department for administrative purposes, 82A-1602

annual meeting required, 66-102

appointment, qualifications and terms of members, 82A-1602.3

"board" defined, 66-103 (2) (d)

continuation in office of board members, 82A-1606

definition of terms, 66-102 (2)

"department" defined, 66-103 (2) (e)

election of officers, 66-102 (1)

employment of personnel for board, 82A-1604

existence and composition of board, 82A-1602.3

legal assistance in hearings conducted by board, 82A-1604

meetings of board, 66-102 (3)

oaths, administration by president and secretary, 66-102 (2)

per diem and expenses of members, 66-109

record of board proceedings to be kept by department, 66-102 (4)

report of board to governor, 66-109

retention of functions by board, 82A-1605

seal of board required, 66-102 (1)

Corporations for practice of architecture, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS

Examination fees, disposition, 66-108

Fees and moneys deposited in earmarked revenue fund for use of board, 66-109 (2)

Insurance against errors and omissions required on public contracts, 66-114

Landscape architects, licensing required, 66-3801 to 66-3813—See LANDSCAPE ARCHITECTS

License fees, disposition, 66-109

Plans of public buildings, architect's seal and signature required, 66-114

INDEX

References are to Title and Section numbers

ARCHITECTS (Continued)

- Revocation of certificate, notice to holder and opportunity for hearing required, 66-112 (2)
- State building programs, appointment of architect, 82-3319
- restrictions on architectural work by state, 82-3320

ARMORIES

- County, city or town participating in building of armory, 77-2006
- Lease of real property for armory or other military facility authorized, 77-2007

ARRAIGNMENT

- See CRIMINAL PROCEDURE, Arraignment, 95-1601 to 95-1608

ARRESTS

- Appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
- Bail
 - defendant taken to nearest judge to fix bail, 95-1105
 - issuance of warrant for failure to comply with conditions, 95-1107
 - peace officer, acceptance of bail, procedure, 95-1103, 95-1104
 - sureties or surety company, arrest powers, 95-1115
- Close pursuit act, 95-619
- Complaint, requirements for issuance and service of warrant, 95-603
- Corporations, issuance and service of summons, procedure on failure to appear, 95-615
- Definitions, Code of Criminal Procedure, 95-601
- Escape, use of force to prevent, 94-3-106
- Exemptions, persons privileged from arrest, 95-616
 - legislators, 1972 Const., V, 8
 - voters, 1972 Const., IV, 6
- Fingerprints and description taken on felony arrest, 80-2003
- failure to furnish information to state, officer's salary withheld, 80-2004
- Force permitted, 95-602
- Indictment found, issuance of warrant, 95-1410
- "Magistrate" defined, 95-208
- Method of arrest, 95-602
- Notice to appear, issuance, when authorized, form, failure to appear, 95-614
- Oral order for arrest, authority of magistrate, 95-208
- Peace officer, arrest by, 95-608
 - assisting peace officer, powers of officer and duties of person commanded to aid officer, 95-609
 - bail, acceptance of, 95-1103, 95-1104
 - duties of officer, 95-604, 95-606
 - release by officer of person arrested, when, 95-610
- Private person, when arrest by authorized, 95-611
- shoplifting, temporary detention for, 95-611
- Radar arrest cases—See MOTOR VEHICLES, Radar arrests
- Resisting arrest, use of force not justified, 94-3-108
- Roadblocks, arrest at, 95-618
- Search and seizure authorized as incident to arrest, 95-701
- Stop and frisk law, 95-719
- Summons, issuance, when authorized, form, service, 95-612
 - definition of summons, 95-601
 - failure to appear, issuance of warrant of arrest, 95-613
- Time of making arrest, 95-607
- Warrant of arrest
 - arrest without warrant, duties of peace officer, 95-606
 - release by officer, when, 95-610
 - bail, setting and accepting under warrant, 95-1104
 - complaint, requirements for issuance and service of warrant, 95-603
 - constitutional requirements, 1972 Const., II, 11
 - defective warrant, procedure, 95-605
 - definition, 95-601
 - duties of peace officer on arrest with warrant, 95-604

INDEX

References are to Title and Section numbers

ARSON

Definitions, 94-2-101, 94-6-101

Elements of offense, punishment, 94-6-104

“bodily injury” defined, 94-2-101 (5)

“occupied structure” defined, 94-2-101 (35)

Negligent arson, elements of offense, punishment, 94-6-103

ARTS COUNCIL

Allocated to state board of education, certain functions retained in board of trustees, 82A-501.1

Appointment and qualifications of members, 82-3602

Biennial report to governor, 82-3606

Chairman and vice-chairman of council, 82-3603

Continuation of council in department of education, 82A-508

Contracts for services and co-operative endeavors, 82-3608

Creation, composition, appointment, qualifications, terms and compensation of members, 82-3603, 82A-508

Creation of council, 82-3601

Duties of council, 82-3606

Executive committee, selection, functions, 82-3604

Expenses of members, 82-3603

Fund-raising drives, deposit and use of proceeds, 82-3609

Gifts and donations, acceptance authorized, deposit and use, 82-3607

Officers and employees, compensation, 82-3605

Purpose of council, 82-3601

Terms of members, 82-3603

ASSAULT

Aggravated assault, elements of offense, punishment, 94-5-202

Elements of offense, punishment, 94-5-201

Mistreatment of prisoners, elements of offense, punishment, 94-8-113

Sexual assault, elements of offense, punishment, 94-5-502

ASSEMBLY

Freedom of assembly, 1972 Const., II, 6

ASSIGNMENT FOR BENEFIT OF CREDITORS

Bulk Transfer chapter inapplicable to assignments, 87A-6-103

Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

ASSIGNMENTS

Accounts, assignments subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS

Cause of action assigned, defenses available against assignee, 93-2802

Claims against state, assignment of, 83-901 to 83-904

Consumer loan act, wage assignments, 47-220

Contract right assignments subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS

Definition of term, 19-103

Wage assignments excluded from Uniform Commercial Code, 87A-9-104

ASSOCIATIONS

Business trusts, 15-2501 to 15-2508—See BUSINESS TRUSTS

Service of process on unincorporated associations, M. R. Civ. P., Rule 4D(2)

ASSUMPTION OF RISK

Affirmative defense, M. R. Civ. P., Rule 8(c)

ATTACHMENT

Affidavit filed to secure attachment before judgment, 93-4302

Availability of remedy before and during action, M. R. Civ. P., Rule 64

Compensation under occupational disease act exempt from, 92-1329

INDEX

References are to Title and Section numbers

ATTACHMENT (Continued)

- Decedents' estates, levy against assets prohibited, 91A-3-812—See DECEDENTS' ESTATES, Creditors' claims
- Document of title covering goods, surrender or injunction required for attachment, 87A-7-602
- Investment securities, levy against, 93-4307
- Personal property subject to security interest, levy against, 93-4338
- Range livestock, method of taking possession, 93-4344
 - filing of papers by county clerk, 93-4346
- Release of attachment of real property where no proceedings taken in action, 93-4331.1
- Sales under attachment validated despite defects, 93-5846
- Summons, attachment at time of issuance, 93-4301
- Teachers' retirement system benefits exempt from attachment, 75-6215

ATTACK

- Continuity in government, constitutional basis, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
- Post-attack resource management, 77-2401 to 77-2406—See WAR, Resource Management

ATTAINDER

- Treason or felony, attainder by legislature prohibited, 1972 Const., II, 30

ATTEMPT

See CRIMINAL OFFENSES

ATTORNEY GENERAL

- Advisory council, creation authorized, limitations, 82A-110
- Board of land commissioners, member of, 1972 Const., X, 4
- Candidacy for public office during term authorized, 1972 Const., VI, 5
- Commission of attorney general recorded by supreme court, M. R. App. Civ. P., Rule 19(a)
- Compromise and settlement of tort actions against state, power, 83-704
- Confidential license plate and certificates of registration, issuance to law enforcement agencies, restrictions, procedure, 82-424
- Constitutional questions litigated, notice to and intervention by attorney general, M. R. Civ. P., Rule 24(c)
- Criminal investigation division, 82-414 to 82-420—See CRIMINAL INVESTIGATION DIVISION
- Department of justice, 82A-1201 to 82A-1209—See DEPARTMENT OF JUSTICE
- Discriminatory practices declared unlawful, enforcement duties, 64-311
- Duties, Const., VI, 4; 82-401
- Election, 1972 Const., VI, 2
- Escheated estates, duties, expense, 91-512
- Executive branch, member of, 1972 Const., VI, 1
- Health and environmental sciences department, legal advice to, 69-4111
- Impeachment, subject to, 1972 Const., V, 13
- Inability to discharge powers and duties of office, legislative declaration of vacancy, procedure, 59-609
- Legal officer of state, 1972 Const., VI, 4
- Oath of office, 1972 Const., III, 3
 - recorded by supreme court, M. R. App. Civ. P., Rule 19(a)
- Occupational disease act, duties under, 92-1343
- Optometry board, representation in supreme court, 66-1315
- Other government employment prohibited during term, 1972 Const., VI, 5
- Psychologists' board, attorney for, 66-3205
- Qualifications, 1972 Const., VI, 3
- Railroads, attorney general as attorney for public service commission, 72-124
- Residence at seat of government, 1972 Const., VI, 1
- Salary, 1972 Const., VI, 5; 25-501
- Securities act enforcement, 15-2021
- Teletypewriter communications system for law enforcement, 82-3901 to 82-3906—See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS

INDEX

References are to Title and Section numbers

ATTORNEY GENERAL (Continued)

Term of office, 1972 Const., VI, 1

Tort actions against state, responsibility for litigation on behalf of state, 83-704

Training co-ordinator for county attorneys, appointment, 82-422—See COUNTY

ATTORNEY

Vacancy in office, how filled, 1972 Const., VI, 6

ATTORNEYS

Annual license tax, 93-2010

disposition of moneys collected, 93-2011

Arrest, attorneys privileged from arrest, when, 95-616

Attorney as justice of the peace, practice of law, limitation, 16-3605

Compensation as attorney for personal representative in decedent estate, 91A-3-720

Corporations for practice of law, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS

Criminal defendants, right to counsel, 1972 Const., II, 24; 95-1001 to 95-1006—See CRIMINAL PROCEDURE, Counsel, right to

Disbarment proceedings, witness fees in, 93-2020

Examination and admission to bar

compensation and expenses of board members, 93-2014

fees for examination and admission, 93-2015

rules of supreme court, 1972 Const., VII, 2

Fees, contractual right to recovery reciprocal, 93-8601.1

Investment advice exempt from securities act, 15-2004

Judicial officers, restrictions on practice of law by, 1972 Const., VII, 9; 93-902

Personal representative of decedent estate, compensation of attorney for, 91A-3-720

Pleadings, signature, effect, M. R. Civ. P., Rule 11

Real estate brokers' act, exemption from, 66-1926

Service of process on attorney required, M. R. Civ. P., Rule 5(b)

AUCTION SALES

Bond of auctioneer, terms, 66-204

Bulk transfers at auction sale, procedure required for protection of creditors, 87A-6-108

Completion of sale, 87A-2-328

Memorandum of auctioneer binding bidder and seller, 66-202

provisions not modified by Uniform Commercial Code, 87A-10-103

Nonresident auctioneers, reciprocal privileges, 66-203.1

Real estate brokers' act, auctioneer's acts exempt from, 66-1926

Sheriff or constable as ex officio auctioneer, liability on official bond, 66-205

AUDIOLOGISTS

See SPEECH PATHOLOGISTS AND AUDIOLOGISTS

AUDITS

Annual audit of governmental entities, 82-4515 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit

AUTOPSIES

Cases in which authorized, procedure, 69-5103 to 69-5106

Coroner, authority to require autopsy, when, 95-802

liability of mortuary or physician limited, 95-813

Occupational Disease Act, autopsies under, 92-1318

B

BAIL

Amount of bail, how determined, 95-1110

reduction or increase in amount, application for, 95-1111

Appeal

bail after conviction, 95-1109

judge may admit defendant to bail, 95-1102

reversal of judgment, bail exonerated or money refunded, 95-2430

INDEX

References are to Title and Section numbers

BAIL (Continued)

Arrest bond certificates, 95-1121 to 95-1123

Arrests

- defendant taken to nearest judge to fix bail, 95-1105
- failure to comply with bail or recognizance, issuance of warrant, 95-1107
- peace officer, acceptance of bail, procedure, 95-1103, 95-1104
- sureties or surety company, arrest powers, 95-1115

Attorney prohibited from furnishing bail, 95-1120

Authority to admit to bail, persons authorized, 95-1102

persons prohibited from furnishing bail, 95-1120

Bailable offenses, 1972 Const., II, 21; 95-1108

Bail-jumping as criminal offense, punishment, 94-7-308

contempt, power of court to punish for not affected, 94-7-308

Conditions of bail bond, 95-1118

Deposits of cash, stocks or bonds for bail, 95-1112

Discharge of bail upon performance of conditions, 95-1116

Discharge of defendant upon allowance and acceptance, 95-1102

Excessive bail prohibited, 1972 Const., II, 22

Forfeiture of bail, procedure, judgment, 95-1116

disposition of judgment and execution, 95-1117

Giving bail before another court or judge, duties of judge, 95-1105

Guaranteed arrest bond certificates, 95-1121 to 95-1123

Habeas corpus to obtain admission to, 95-2702

discharge of person detained, 95-2713

Initial appearance of arrested person, duty to inform of right to bail, 95-902

Judge may admit defendant to bail, 95-1102

Minor offenses, setting and accepting bail, 95-1103

New trial, provisions for bail, 95-1119

Not guilty judgment, defendant discharged from obligation of bail, 95-2202

Peace officer, acceptance of bail, procedure, 95-1103, 95-1104

Purpose of bail, 95-1101

Qualifications of bail, justification by sureties, challenge of bail or sufficiency of sureties, 95-1113, 95-1114

Real estate as bail, amount required, 95-1112

Recognizance, release authorized, duties of court, 95-1106

Revocation of bail, 95-1111

Substitution of bail, 95-1111

Sureties or surety companies, how bail furnished, 95-1112

Surrender of defendant, 95-1115

Warrant of arrest, setting and accepting bail under, 95-1104

BANKRUPTCY

Bulk transfer sale chapter inapplicable to sale by trustee, 87A-6-103

Discharge as affirmative defense, M. R. Civ. P., Rule 8(c)

Real estate brokers' act inapplicable to trustees, 66-1926

Uniform Commercial Code supplemented by general principles of law, 87A-1-103

BANKS AND BANKING

Accounts excluded from chapter on secured transactions, 87A-9-104

Annual meeting of directors, when held, 5-208

Application for certificate of authorization

filing of certificate and articles, 5-203

investigation by department, information gathered transmitted to board, 5-202

issuance of certificate, 5-203

presentation of articles together with application to department, 5-202

refusal of board to approve application, 5-202.1, 5-607 to 5-614

Branch banks prohibited, 5-1028

Uniform Commercial Code does not change law, 87A-10-103

Capital stock required, amount and par value, 5-206

Certification of check, effect, 87A-3-411

Closing and taking possession of bank by department, grounds, 5-1101

bank closed with criminal intent, penalty, 5-1102

borrowing money from federal agency authorized, purpose, 5-1126

INDEX

References are to Title and Section numbers

BANKS AND BANKING (Continued)

Closing and taking possession of bank by department (Continued)

judicial proceedings, power of department to institute, 5-1107
placing of bank in possession of department, notice, 5-1103

effect of posting notice, 5-1104

powers of department, 5-1107

recourse of aggrieved bank, injunction, procedure, 5-1108

resumption of business after closing, 5-1106

taking possession of bank by department, notice, 5-1105

Closing of bank in emergency or for special occasion

additional to other authority for closing bank, 5-1062

definition of terms, 5-1058

effect of closing, 5-1062, 19-107

emergency closing by department, 5-1059

emergency closing by officers of bank, 5-1060

notice required, 5-1061

holiday or special observance, closing for, 5-1060

Common trust fund authorized for banks and trust companies acting as fiduciaries, 5-1401

Confidentiality of information obtained by department, penalty for violation, 5-1012

Deposits and collections

agency of collecting bank for owner of item, 87A-4-201

agreements on applicable state law, restrictions on, 87A-1-105

agreements to vary terms of chapter, 87A-4-103

altered items

customer's duty to report to bank, 87A-4-406

original amount, right to charge to depositor's account, 87A-4-401

waiver of defense against claim against prior parties, 87A-4-406

authenticity of third-party documents presumed, 87A-1-202

availability of deposits for withdrawal, time, 87A-4-213

blanks left in item, bank's right to charge as completed, 87A-4-401

branch office treated as separate bank, 87A-4-106

care required of collecting bank in collection and settlement, 87A-4-202

charge-back against provisional settlement for uncollected items, 87A-4-212

citation of Uniform Commercial Code chapter, 87A-4-101

clearinghouse rules, effect on rights and liabilities, 87A-4-103

commercial instrument payable through bank as authority to collect, 87A-3-120

Commercial Paper chapter subject to Bank Deposits and Collections chapter, 87A-3-103

conflict between chapters of Uniform Commercial Code, 87A-4-102

conflict of laws with respect to bank's liability, 87A-4-102

corresponding banks, collecting bank not liable for defaults of, 87A-4-202

course of dealing between parties, 87A-1-205

cut-off hour for handling of items and making of entries, 87A-4-107

damages for breach of warranty or engagement by collecting bank or customer, 87A-4-207

damages for failure to exercise ordinary care, measure, 87A-4-103

death of customer, effect on items in process of collection, 87A-4-405

deferred posting permitted to payor bank, 87A-4-301

definition of terms, 87A-4-104

"collecting bank," 87A-4-105

"depository bank," 87A-4-105

general definitions in Uniform Commercial Code, 87A-1-201

index of definitions, 87A-4-104

"intermediary bank," 87A-4-105

"payor bank," 87A-4-105

"presenting bank," 87A-4-105

"process of posting," 87A-4-109

"remitting bank," 87A-4-105

delay by payor bank in returning item, liability for, 87A-4-302

delay permitted collecting bank in effort to secure payment, 87A-4-108

destruction of item in transit, collecting bank not liable for, 87A-4-202

direct transmission to payor authorized, 87A-4-204

INDEX

References are to Title and Section numbers

BANKS AND BANKING (Continued)

Deposits and collections (Continued)

- dishonor of item, bank's liability when wrongful, 87A-4-402
- dishonor of paper tendered in remittance, collecting bank not liable, 87A-4-211
- documentary drafts
 - dealing with goods by collecting bank following dishonor of draft, 87A-4-504
 - delivery of documents to drawee on acceptance or payment, 87A-4-503
 - dishonor of draft, duty of collecting bank to transferor, 87A-4-501, 87A-4-503
 - lien of collecting bank on goods following dishonor of draft, 87A-4-504
 - "on arrival" drafts, time for presentment, 87A-4-502
 - presentment of draft and documents by collecting bank, 87A-4-501
- endorsement supplied by depository bank for customer, 87A-4-205
- engagements of collecting bank and customer transferring item, 87A-4-207
- excuses for delay by conditions beyond control of bank, 87A-4-108
- extension of time permitted collecting bank in effort to secure payment, 87A-4-108
- Federal Reserve regulations and operating letters, effect on rights and liabilities, 87A-4-103
- final settlement of item
 - acts constituting final settlement, 87A-4-213
 - time of final settlement by remittance instrument or authorization to charge, 87A-4-211
- foreign currency items, rate at which charged back on failure of collection, 87A-4-212
- good faith required, 87A-1-203
- identification of transferor bank, sufficiency of agreed method, 87A-4-206
- incompetence of customer, effect on items in process of collection, 87A-4-405
- insolvency of collecting or payor bank, rights and preferences to item in process of collection, 87A-4-214
- insolvent banks, deposits accepted by, 5-803
- instructions from transferor of item, duty of collecting bank to follow, 87A-4-203
- loss of item in transit, collecting bank not liable for, 87A-4-202
- media of remittance acceptable by collecting bank, 87A-4-211
- order of posting of accepted or paid items, 87A-4-303
- overdraft, right of bank to charge to customer's account, 87A-4-401
- "pay any bank" endorsement, effect, 87A-4-201
- place of presentment of item to payor bank, 87A-4-204
- posting process, steps enumerated, 87A-4-109
- presentment of item by written notice to party to accept or pay, 87A-4-210
- promptness in sending item for collection, factors considered, 87A-4-204
- provisional nature of settlement given by collecting bank, 87A-4-201
- refund of provisional settlement for uncollected item, right of collecting bank to obtain, 87A-4-212
- reservation of rights by party while performing or accepting performance, 87A-1-207
- restrictive endorsement not binding on intermediary or payor bank, 87A-4-205
- return by payor bank of item provisionally settled, 87A-4-301
- security interest of bank in collection item, 87A-4-208
- separate office treated as separate bank, 87A-4-106
- short title of Uniform Commercial Code chapter, 87A-4-101
- stop payment order
 - duration of effectiveness of order, 87A-4-403
 - items in process of collection, effect against, 87A-4-303
 - loss from payment contrary to order, burden of proof, 87A-4-403
 - opportunity to bank prior to action with respect to item, 87A-4-403
 - subrogation of bank liable for loss to rights of other parties, 87A-4-407
- subrogation of bank liable on stop payment order to rights of other parties, 87A-4-407
- suspension of payments by collecting or payor bank, rights in item in process of collection, 87A-4-214
- time after which bank not obligated to pay check, 87A-4-404
- time allowed for required actions, 87A-1-204
 - collecting bank, time allowed to for action, 87A-4-202
 - return of provisionally settled item by payor bank, 87A-4-301
- unauthorized signatures, customer's duty to report to bank, 87A-4-406

INDEX

References are to Title and Section numbers

BANKS AND BANKING (Continued)

Deposits and collections (Continued)

- unpaid items, return to depository bank by intermediary or payor bank, 87A-4-212
- usage of banks, effect on rights and liabilities, 87A-1-205, 87A-4-103
- value given by bank supporting status as holder in due course, 87A-4-209
- warranties of collecting bank and customer, 87A-4-207
- withdrawal of deposits, when available, 87A-4-213

Director of business regulation and employees not to be interested in or borrowers from state bank, 5-604

Directors, increase in number, 5-217

annual meeting, when held, 5-208

articles of agreement to provide for increase, 5-201

Discriminatory practices by financial institutions unlawful, 64-306 (4)—See **CIVIL**

RIGHTS, Discriminatory practices

“financial institution” defined, 64-305 (8)

Dissolution of bank, when unclaimed distribution presumed abandoned, 67-2206—See also **PROPERTY**, Unclaimed property

Drafts, power to accept, 5-1001

Drive-in and walk-up facilities permitted, 5-1028

Examination of bank, trust company or investment company

banks, examination and supervision by department, 5-901

confidentiality of information obtained by department, penalty for violation, 5-1012

fee payable for examination, 5-908

special examinations and fees, 5-910

Holidays, when closing permitted, 19-107

Insolvent banks

priority of payment of debts, 5-1114

restrictions on deposits accepted by, 5-803

Installment loans by banks, charges permitted, 5-527

Investment advice, exemption from securities act, 15-2004

Investment companies, supervision and examination fees, 5-908

special examinations, fees, 5-910

Letters of credit, power to issue, 5-1001—See also **LETTERS OF CREDIT**

National bank powers extended to state banks, departmental consent required, regulation, 5-1002.1

Public funds, deposit by county, city and town treasurers, 16-2618

Real estate loans, limitations on, 5-506

Reports to department of business regulation, 5-701 to 5-706

call for reports by department, 5-704

call reports, form, contents, formal requirements, transmittal to department, publication, 5-701

frequency of calls, 5-704

confidentiality of certain reports, 5-705

declaration of dividend, report to department, time for, 5-702

failure to make report within time specified, penalty, 5-706

false report of condition of bank by employee or agent of department as felony,

punishment, removal from office, 5-705

“past day specified,” meaning of, 5-704

special reports as required by department, 5-703

false statement as perjury, 5-703

violation by employee or agent of department as felony, punishment, removal from office, 5-705

Reserves against demand deposit liability, department’s power to establish, raise and lower, 5-532

Retail installment sales act

compliance with provisions other than licensing required, 74-603

license not required under, 74-603

Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A

Securities exempt from securities act, 15-2013

Special examination by state examiner, fee, 5-910

State banking board, composition and appointment of members, 82A-407
allocated to department for administrative purposes, 82A-407 (4)

INDEX

References are to Title and Section numbers

BANKS AND BANKING (Continued)

State banking board (Continued)

- costs and expenses charged to department of business regulation, 5-609
- director as chairman of board, 82A-407
- disqualification of member having direct or indirect interest, 5-614
- hearings by board, notice and procedure, 5-612
 - prehearing discovery authorized, 5-613
 - protesting banks as intervenors, 5-612
- meetings of board, quorum, 5-609
- offices, equipment and personnel, 5-609
- per diem and expenses, 5-609
- powers of board, 5-610
- removal of members, 5-609
- rules and regulations to be adopted, contents, scope, 5-611
- secretary, election, 5-609

State department and superintendent's position abolished and functions transferred, 82A-402

Subsidiary Trust Company Act, 5-1501 to 5-1508

- acceptance of deposits or conduct of commercial banking business prohibited, 5-1504
- "affiliated bank" defined, 5-1502 (2)
- business permitted to be conducted by subsidiary trust companies, 5-1504
- definition of terms, 5-1502
- incorporation of subsidiary trust company, applicable law, 5-1503
- short title, 5-1501
- "subsidiary trust company" defined, 5-1502 (1)
- transfer of fiduciary relationships, application, notice, procedure, 5-1507, 5-1508
 - affiliated banks to subsidiary trust companies, 5-1507
 - between affiliated banks, 5-1508
- trust offices, location, 5-1505, 5-1506
 - affiliated banks, 5-1506
 - subsidiary trust companies, 5-1505
 - "trust office" defined, 5-1502 (6), (7)

Surplus and undivided profits converted to capital, departmental approval required, procedure, 5-1024

Taxation

- corporation license tax, state and national banks subject to, effective dates, 84-1501.6, 84-1501.7—See TAXATION, Corporation license tax
- moneyed capital and shares of bank, assessment of, 84-307
 - basis for assessment, 84-308
- offices in more than one county, assessment and apportionment of tax, 84-4606

Unclaimed deposits and funds, when presumed abandoned, 67-2202—See PROPERTY, Unclaimed property

Unclaimed funds, disposition, 5-1117

BARBERS AND BARBER SHOPS

Advanced barber training program, clinic or seminar, annual license fee, 66-411

Apprenticeship and apprentice examination, 66-403, 66-409, 66-411

"Barbershop" defined, 66-401.1

- administrative services provided by department, 82A-1603

Board of barbers

- allocation to department for administrative purposes, 82A-1602
- appointment, qualifications, removal and terms of members, 82A-1602.5
- compensation of board members, 66-408
- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.5
- legal assistance in hearings by board, 82A-1604
- moneys received by board, deposit, 66-407
- officers of board, 66-407
- records of board proceedings to be kept by department, 66-407
- report of board, 66-408

INDEX

References are to Title and Section numbers

BARBERS AND BARBER SHOPS (Continued)

Board of barbers (Continued)

- retention of functions by board, 82A-1605
- rules, adoption authorized, 66-409 (5)
- seal, adoption required, 66-407
- travel expense, reimbursement, 66-408

Definition of terms, 66-401.1

Examinations for apprentice cards and barber certificates of registration conducted by department, frequency, 66-409

Inspectors of barber shop, school or college, selection, compensation, 66-409 (6)

Revocation, suspension, refusal to issue or renew license of barbershop, barber school or college, grounds, 66-403.1

BEDDING

Shoddy control, 69-4701 to 69-4707—See SHODDY

BENEVOLENT ASSOCIATIONS

See INSURANCE, Benevolent associations, 40-4901 to 40-4917

BIGAMY

See CRIMINAL OFFENSES, Bigamy

BILL OF RIGHTS

Constitutional provisions, 1972 Const., II

Procedural or substantive rights created for first time prospective and not retroactive, 1972 Const., Transition Schedule, Sec. 3

Unenumerated rights not denied, impaired or disparaged, 1972 Const., II, 34

BILLS

Form and procedure for passage of bills, 1972 Const., V, 11—See LEGISLATURE, Bills

BILLS OF EXCHANGE

See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

BILLS OF LADING

Actions based on shipment, time and manner of institution regulated by terms of bill or tariff, 87A-7-309

Altered bill enforceable according to original tenor, 87A-7-306

Attachment of goods covered by bill, procedure required, 87A-7-602

Authenticity of third-party documents presumed, 87A-1-202

Care required of carrier, 87A-7-309

Citation of Uniform Commercial Code chapter, 87A-7-101

Claims based on shipment, time and manner of presentation regulated by terms of bill or tariff, 87A-7-309

Commercial Paper chapter inapplicable to bills, 87A-3-103

Conflicting claims to goods, carrier compelling interpleader, 87A-7-603

Connecting carriers on through bills, liability, 87A-7-302

Count of packages, duty of carrier, 87A-7-301

Course of dealing between parties, application, 87A-1-205

Damages for loss or injury to goods, limitation by terms of bill or tariff, 87A-7-309

Date on bill erroneous, liability of issuer for, 87A-7-301

Defenses defeated by negotiation of bill, 87A-7-502

Definition of terms, 87A-7-102

general definitions in Uniform Commercial Code, 87A-1-201

Delivery of goods by carrier

destroyed bill, 87A-7-601

good faith delivery exonerating carrier, 87A-7-404

lien lost for voluntary delivery, 87A-7-307

lien to be satisfied before delivery, 87A-7-403

lost bill, 87A-7-601

obligation of carrier to deliver, 87A-7-403

INDEX

References are to Title and Section numbers

BILLS OF LADING (Continued)

- Delivery of goods by carrier (Continued)
 - persons who may require delivery, 87A-7-403
 - stolen bill, 87A-7-601
 - surrender of document required before delivery, 87A-7-403
- Description of goods guaranteed to issuer by shipper, 87A-7-301
- Destination bills, issuance, 87A-7-305
- Destroyed bills, obtaining delivery of goods, 87A-7-601
- Diversion of goods on instructions of holder, 87A-7-303
 - consignee's interest defeated by diversion, 87A-7-504
- Duplicate bill, rights and liabilities of parties under, 87A-7-402
- Endorsement of bill
 - default by carrier or previous endorser, endorser not liable for, 87A-7-505
 - negotiation, when endorsement required for, 87A-7-501
 - nonnegotiable bill, effect of endorsement, 87A-7-501
 - transferee's right to require necessary endorsement, 87A-7-506
- Federal law controlling over Commercial Code chapter, 87A-7-103
- Forwarder of freight issuing bill, rights and obligations of parties, 87A-7-503
- Good faith required, 87A-1-203
- Interpleader of conflicting claims to goods, 87A-7-603
- Irregularities in issue of bill, obligations of issuer unaffected, 87A-7-401
- Judicial process against goods covered by bill, procedure required, 87A-7-602
- Letter of credit requirements, law governing adequacy, 87A-7-509
- Lien of carrier
 - charges covered by lien, 87A-7-307
 - delivery of goods causing loss of lien, 87A-7-307
 - delivery of goods, satisfaction of lien required for, 87A-7-403
 - enforcement of lien, procedure, 87A-7-308
 - persons against whom lien enforceable, 87A-7-307
 - refusal to deliver goods causing loss of lien, 87A-7-307
 - sale of goods to enforce lien, 87A-7-308
- Livestock injury, prior law not modified by Uniform Commercial Code, 87A-10-103
- Lost bills, obtaining delivery on, 87A-7-601
- Misdescription of goods, liability of issuer for, 87A-7-301
- Negotiability of bill, requirements for, 87A-7-104
 - notice of arrival of goods, effect on negotiability of term requiring, 87A-7-501
- Negotiation of bill
 - defenses defeated by negotiation, 87A-7-502
 - delivery required for negotiation, 87A-7-501
 - endorsement, when required for negotiation, 87A-7-501
 - right of holder to require necessary endorsement, 87A-7-506
 - formal requirements for negotiation, 87A-7-501
 - rights acquired by holder to whom negotiation made, 87A-7-502
 - sets of parts, negotiation of bill issued in, 87A-7-304
 - title required by holder to whom negotiation made, 87A-7-502
 - warranties of negotiator, 87A-7-507
 - intermediary delivering bill, 87A-7-508
- Nonreceipt of goods, liability of issuer for, 87A-7-301
- Overseas shipment of goods, form of bill required, 87A-2-323
 - bills issued in sets of parts, 87A-7-304
- Prior interest prevailing over interest represented by bill, 87A-7-503
- Reconsignment of goods on instructions of holder, 87A-7-303
 - consignee's interest defeated by reconsignment, 87A-7-504
- Regulatory laws unimpaired by Uniform Commercial Code, 87A-10-103
 - controlling over Commercial Code chapter, 87A-7-103
- Reservation of rights by party while performing or accepting performance, 87A-1-207
- Sale contract requirements, law governing adequacy, 87A-7-509
- Sale of goods to enforce carrier's lien, 87A-7-308
- Security interest in bill, means of perfection, 87A-9-304
 - possession taken by secured party, 87A-9-305
- Seller of goods reserving security interest in goods shipped, 87A-2-505
- Sets of parts, liability on bills issued in, 87A-7-304
- "Shipper's weight, load and count," meaning and protection accorded issuer, 87A-7-301

INDEX

References are to Title and Section numbers

BILLS OF LADING (Continued)

- Short title of Uniform Commercial Code chapter, 87A-7-101
- Stolen bills, obtaining delivery of goods, 87A-7-601
- Stoppage in transit by seller of goods
 - indemnification by seller for losses and expenses, 87A-7-504
 - surrender of bill required, 87A-2-705
- Substitute bill issued at another place, 87A-7-305
- Through bills, responsibility for acts of connecting carriers, 87A-7-302
- Time allowed for required actions, 87A-1-204
- Transfer of bill
 - endorsement necessary to title, right of transferee to require, 87A-7-506
 - notification to carrier of transfer, adverse interest perfected before, 87A-7-504
 - rights acquired by transferee, 87A-7-504
 - sets of parts, negotiation of bill issued in, 87A-7-304
 - title acquired by transferee, 87A-7-504
 - warranties of transferor, 87A-7-507
 - intermediary delivering bill, 87A-7-508
- Unaccepted delivery order, negotiation of bill defeating title based on, 87A-7-503
- Unauthorized issuance of bill, obligations of issuer unaffected, 87A-7-401
- Unknown goods, description on bill, 87A-7-301
- Usage of trade, application, 87A-1-205
- Warehouse receipt law, provisions included in but omitted from bills of lading law, 87A-7-105
- Warranties by transferor of bill, 87A-7-507
 - intermediary delivering bill, 87A-7-508
- Weighing of bulk freight, duty of carrier, 87A-7-301
- Wrongfully procured bill, when defeated by prior interest, 87A-7-503

BINGO

See GAMBLING, Bingo and raffles

BIRTH

Certificates of birth, 69-4413 to 69-4423—See VITAL STATISTICS, Birth certificates
Judicial determination of date, application of rules of civil procedure to proceedings,
M. R. Civ. P., Rule 81(a), Table A

BLIND PERSONS

- Citation of White Cane Act, 71-1303
- Guide dogs, right to use in public places, 71-1306
- Housing accommodations, right of blind and visually handicapped persons to, 71-1305.1
 - guide dog, access with, liability for damages, 71-1306 (2)
- Pedestrian approaching blind person, duty to avoid injury, 71-1307
- Penalty for violations of White Cane Act, 71-1308
- Policy of state to encourage participation in social and economic life, 71-1304
- Right to full and equal use of thoroughfares and public facilities, 71-1305
 - guide dog, right to be accompanied by, 71-1306 (1)
- Services to the blind
 - gifts, department power to accept and use, 71-1407
 - supplementary services to be provided by state department, 71-1404
- Traffic to stop for person using cane or guide dog, 71-1307
- White canes, use restricted to blind persons, 71-1305

BLOOD

- Transfusion as service and not sale, 69-2203
 - immunity from liability of physician, long-term care facility, and hospital in absence of negligence, 69-2203
 - immunity of blood bank testing blood before delivery, 69-2204
 - labeling of containers as to testing procedures used, 69-2205

BOARDING HOMES

- County operation of home, 16-1037
 - services provided at county-operated home, 16-1038

INDEX

References are to Title and Section numbers

BOARDING HOMES (Continued)

- Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
- Lease of county property for home, 16-1036

BOARD OF INVESTMENTS

- See also REORGANIZATION OF STATE GOVERNMENT, Department of administration
- Allocation to department for administrative purposes, 82A-204 (2)
- Amortization bonds, issuance by city or town subject to board of investment approval, 11-2329
- County, city or district bonds, notice to board of sale required unless waived, 79-1102, 79-1103
 - redemption of bonds held by state to be permitted by board, exceptions, procedure, 79-1105
- Deposit of state funds under direction of board, 79-301
- Designation as quasi-judicial board, 82A-204 (5)
- Existence and composition of board, appointment and qualifications of members, 82A-204
- Functions, powers and duties, 82A-204 (4)
- General fund warrants, investment of funds in, procedure, 79-1101
- Investment of state funds not immediately needed, 79-305

BOARD OF PUBLIC EDUCATION

- Advisory council, creation authorized, limitation, 82A-110
- Composition of board, 75-5610
- Constituent of state board of education, Const. X, 9; 75-5609
- Creation, Const. X, 9

BOARD OF REGENTS

- Advisory council, creation authorized, limitations, 82A-110
- Chairman, selection, 75-5612
- Commissioner as secretary, 75-5612
- Commissioner of higher education, appointment, facilities to be provided, 75-5611
- Composition, appointment of members, 75-5610
- Constituent of state board of education, 75-5609, 75-5615
- Creation, 1972 Const., X, 9; 75-5609
- Definition, 75-5609
- Federal higher education programs commission allocated to board, 82A-512—See COMMISSION ON FEDERAL HIGHER EDUCATION PROGRAMS
- Meetings of board, notice, 75-5613
- Oath of members, 75-5610
- Per diem and expenses of members, 75-5614
- Powers and duties, 75-5617
- Qualification of members, 75-5610
- Quorum, 75-5612
- Record of proceedings required, 75-5616
- Rules, adoption, 75-5616
- Seal, adoption and use, 75-5616
- Student as appointive member of board, 75-5619
- Transition from former board of education, procedure, 75-5618
- Work-study program, administration, 75-9101 to 75-9111—WORK-STUDY PROGRAM

BOILERS

- See also INSPECTION OF BOILERS
- Certificates of inspection for boilers, 69-1511
 - exempt boilers, 69-1515
 - fees for inspection, 69-1512
 - operation without license unlawful, 69-1517

INDEX

References are to Title and Section numbers

BOILERS (Continued)

- Engineer's license required, 69-1508
 - annual renewal of license, 69-1516
 - classification of engineers, 69-1509
 - emergency operation by unlicensed person, 69-1517
 - fees for licenses, 69-1512
 - penalty for operation without license, 69-1508
 - qualifications of engineers, 69-1509
 - re-examination after rejection of license, 69-1513, 69-1514
 - revocation of license on complaint, 69-1510

BOND ISSUES

- Board of housing, revenue bonds and notes, 35-508 to 35-522—See HOUSING ACT OF 1975
- Capitol improvement and repair bonds, 78-741 to 78-745—See STATE CAPITOL, Building improvement and repair
- Flood control bonds issued by counties and municipalities, 89-3312
- Industrial development bonds, 11-4103 to 11-4107—See INDUSTRIAL DEVELOPMENT, Bonds
- Issuance, transfer and registration of investment securities, 87A-8-101 to 87A-8-406—See INVESTMENT SECURITIES
- Limitation of actions and defenses relating to issuance of state or municipal bonds, 93-2612
- Long-range building program bonds, 79-2201 to 79-2205—See STATE CAPITOL, Long-range building program financing
- Redemption before maturity of bonds held by state, 79-1105
- Sale of bonds, notice to board of investments required, waiver, 79-1102, 79-1103
- Validation of prior issues, 79-2001 to 79-2004—See PUBLIC FINANCE, Bond validating act

BONDS AND UNDERTAKINGS

- Bail in criminal proceedings, 95-1101 to 95-1123—See BAIL
- City and town officers and employees
 - adequacy of bond, determination, 6-603
 - amount of bonds, 6-602
 - commission and commission-manager governments, 6-608
 - companies authorized to write bonds, 6-604
 - competitive bids to be sought, 6-602
 - conditions in bond, 6-606
 - form of bonds, approval, 6-605
 - premiums, payment out of budget, 6-607
 - purchase of bonds by council or commissioners, persons covered, 6-601
- Conservator of estate of protected person, bond or deposit of securities, 91A-5-411, 91A-5-416
- County officers and employees, bonds covering
 - amount of bonds, determination, 6-204
 - adequacy of bond supervised and determined by department, 6-205
 - commissioners to purchase bonds, 6-203
 - companies authorized to execute bonds, 6-206
 - competitive bids to be sought, 6-204
 - filing and recording, 6-208
 - form of bonds, approval, 6-208
 - group bonds permitted, 6-203
 - conditions and signature of bonds, 6-209
 - premiums, payment out of budget, 6-207
- County printing contract, bond of contractor, 16-1231
- Fees of secretary of state for receiving and recording, 25-102
- Homicide by beneficiary causing breach as bar to benefits, 91A-2-803 (3)
- Personal representative of estate of decedent, 91A-3-603 to 91A-3-606—See PERSONAL REPRESENTATIVE
- Restaurant, bar and tavern wage protection bond, 41-2002 to 41-2010—See WAGES, Restaurant, Bar and Tavern Wage Protection Act

INDEX

References are to Title and Section numbers

BONDS AND UNDERTAKINGS (Continued)

- State officers and employees, bonds furnished by
 - amount of bonds, determination, 6-106
 - companies authorized to write bonds, 6-107
 - competitive bidding required, 6-106
 - department of administration to purchase bonds, 6-105
 - form of bonds, approval, 6-105
 - group bonds permitted, 6-105
 - judicial officers exempt from general provision, 6-105
 - legislative employees exempt from general provision, 6-105
 - premiums, proration and payment, 6-108
- Uniform Probate Code, clerk's certificate discharging liens securing fiduciary performance, 91A-3-1008
- Wheat research and marketing, official bonds of division chief, deputy or assistant, 3-2916—See AGRICULTURE

BOULDER RIVER SCHOOL AND HOSPITAL

See also STATE INSTITUTIONS

- Cost of support, payment by resident or responsible person, 80-1601 to 80-1604
- Fishing by inmates, license not required, 26-202.1
- Functions of institution, 80-2604
- Industrial activities permitted, 80-1501 to 80-1503
- Juvenile facilities under department of institutions, transfer of patients from, 80-2209
- Management and control of school, 80-1401 et seq.
- Purpose of school, 80-2604
- Transfer of patients from children's center, 80-2106

BOUNTIES

- Predatory animals, destruction supervised by department, administration of funds, 46-1903
- State bounty
 - claims and certificates filed with department, registration, 46-1908
 - employment of salaried hunters and trappers from bounty funds, 46-1912
 - examination of claim and certificate by department, 46-1909
 - approval or disapproval by department, 46-1909
 - expenditure of funds by department, 46-1903
 - fraudulent claims under bounty law, penalty, 46-1915
 - license money available for bounties, 46-1901
 - sale of furs, skins and specimens, disposition of proceeds, 46-1904
 - tax levy against livestock to provide moneys, 46-1914, 84-5214

BOXING, SPARRING AND WRESTLING

- Board of athletics to have sole control and jurisdiction, 82-303
 - administrative services provided by department of professional and occupational licensing, 82A-108, 82-302
 - specific duties of department, 82-302
 - allocated to department for administrative purposes, 82A-1602
 - "department" defined, 82-301.1
 - continuation in office of board members, 82A-1606
 - employment of personnel of board, 82A-1604
 - existence and composition of board, appointment and terms of members, 82A-1602.4
 - functions and duties of board generally, 82A-1605
 - legal assistance in hearings by board, 82A-1604
- Department of professional and occupational licensing, duties, 82A-108, 82-302
- Report of ticket sales and payment of tax, 82-308
- Tax on gross receipts from exhibitions, payment and deposit, 82-308

BRANCHES OF GOVERNMENT

- Executive branch, 1972 Const., VI—See GOVERNOR; LIEUTENANT GOVERNOR; PUBLIC OFFICERS AND EMPLOYEES; REORGANIZATION OF STATE GOVERNMENT; SECRETARY OF STATE; STATE AUDITOR; SUPERINTENDENT OF PUBLIC INSTRUCTION

INDEX

References are to Title and Section numbers

BRANCHES OF GOVERNMENT (Continued)

Judicial branch, 1972 Const., VII—See COURTS; DISTRICT COURTS; JUDGES;
JUSTICES OF THE PEACE; SUPREME COURT
Legislative branch, 1972 Const., V—See LEGISLATURE
Separation of powers, 1972 Const., III, 1

BRANDS

Animals in restraint or captivity, adoption of distinctive brand for authorized, recording, fee, 67-205
Livestock, illegal branding or altering or obscuring brand as criminal offense, punishment, 94-6-312—See LIVESTOCK

BREACH OF PROMISE

Acts within state not to give rise to cause of action, 17-1203
Cause of action abolished, 17-1202
Litigation and threat of litigation prohibited, 17-1204
Penalty for bringing action, 17-1206
Settlements and compromises void, 17-1205

BREAD

Vitamin and mineral contents required, 27-803
definition of terms, 27-801
enforcement procedures, 27-804
modification of requirements, 27-804
penalties for violations, 27-805

BRIBERY

Gambling offenders, acceptance of bribe or payment for protection or licensing of, 94-8-417
Official and political matters, elements of offense, punishment, 94-7-102
definitions, 94-2-101, 94-7-101
gifts to public servants by persons subject to their jurisdiction, 94-7-105
past official acts, acceptance of compensation for, punishment, 94-7-104
School book selection, unlawful inducement to school official or employee, 75-7610
Sporting events, acts constituting offense of bribery, punishment, 94-8-112

BROKERS

Securities brokers—See SECURITIES REGISTRATION, Broker-dealers

BUDGET ACT

See PUBLIC FINANCE, State finance

BUILDING AND LOAN ASSOCIATIONS

Accounts excluded from chapter on secured transactions, 87A-9-104
Annual report of department to Governor, contents, 7-138
Consolidation of associations authorized, membership vote required, 7-113.2
Depositories of public funds, eligibility, 16-2618, 79-301, 79-306
Dissolution of association, when distribution presumed abandoned, 67-2206—See also PROPERTY, Unclaimed property
Examination of association, fee, 5-909
special examinations, fee, 5-910
Fines, premiums, or penalties, collection from member prohibited, exception, 7-113
Insolvency or impairment, proceedings by department, powers, 7-150
Interest on late payments, 7-113
Real estate loans permitted, 7-113.1
Report of condition upon request of department required, contents, formal requirements, publication, 7-127
Securities exempt from securities act, 15-2013
Taxation, 84-7601
Transfer of obligations, funds and property to another association authorized, membership vote required, 7-113.2
Unclaimed deposits and funds, when presumed abandoned, 67-2202—See also PROPERTY, Unclaimed property
Unlawful acts of director, officer, agent or employee constituting felony, 7-139

INDEX

References are to Title and Section numbers

BUILDINGS

- Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623
- State-wide building construction standards, 69-2105 to 69-2124
 - applicable to public places outside municipalities, 69-2107
 - definition of terms, 69-2105
 - department of administration to administer provisions, 69-2109
 - adoption of rules, 69-2111
 - hearings by department, when required, 69-2111
 - powers of department, 69-2114
 - injunction available against violations, 69-2118
 - mobile home and recreational vehicle construction standards, 69-2122 to 69-2124—
 - See MOBILE HOMES
 - municipalities, 69-2112, 69-2116, 69-2117
 - permit required for construction of building, 69-2113
 - purpose of law, 69-2110
 - violations as misdemeanor, 69-2119

BULK TRANSFERS

- Agreements as to applicable state law, restrictions on, 87A-1-105
- Application of proceeds to debts of transferor, 87A-6-106
- Assignments for benefit of creditors not subject to chapter, 87A-6-103
- Assumption of debt by transferee exempting from Bulk Transfer chapter, 87A-6-103
- Auction sales, procedure required for protection of creditors, 87A-6-108
- Authenticity of third-party documents presumed, 87A-1-202
- Citation of Uniform Commercial Code chapter, 87A-6-101
- Commercial paper transferred in bulk transfer not held in due course, 87A-3-302
- Corporate reorganization proceeding not subject to chapter, 87A-6-103
- Course of dealing between parties, application, 87A-1-205
- Creditors entitled to protection under chapter, 87A-6-109
- Definition of terms, 87A-6-102
 - general definitions in Uniform Commercial Code, 87A-1-201
- Equipment transfers, when subject to chapter, 87A-6-102
- Exemption of transfers from chapter, 87A-6-103
- Good faith required, 87A-1-203
- Judicial sales, chapter inapplicable to, 87A-6-103
- Lien foreclosure not subject to chapter, 87A-6-103
- Limitation of actions and levies by creditors, 87A-6-111
- List of creditors, preparation and filing or holding for inspection, 87A-6-104
- Manufacturers subject to chapter, 87A-6-102
- Merchandise enterprises subject to chapter, 87A-6-102
- Notice to creditors of transfer
 - contents of notice, 87A-6-107
 - delivery to creditors, means permitted, 87A-6-107
 - persons to whom sent, 87A-6-107
 - required for transfer to be effective against creditors, 87A-6-105
- Payments in good faith to particular creditors, credit to transferee or auctioneer for, 87A-6-109
- Proceeds of sale, application to debts of transferor, 87A-6-106
- Schedule of property transferred, preparation and filing or holding for inspection, 87A-6-104
- Security interest, creation is not bulk transfer, 87A-9-111
- Security transactions not subject to chapter, 87A-6-103
- Short title of Uniform Commercial Code chapter, 87A-6-101
- Statute of frauds applicable to sale of personal property other than goods and securities, 87A-1-206
- Subsequent transfers by transferee with defective title, effect, 87A-6-110
- Time allowed for required actions, 87A-1-204
- Usage of trade, application, 87A-1-205

BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

- Abolition of bureau and transfer of functions, 82A-1202
- Assistance to local officers in establishing and maintaining local bureaus, 80-2006

INDEX

References are to Title and Section numbers

BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION (Continued)

- Co-operation with and assistance to law enforcement officers, 80-2002
- Co-operation with FBI and other states, 80-2005
- Criminal record of person arrested for felony, information to law enforcement officer, 80-2003
- Destruction of fingerprints and description on acquittal of person arrested, 80-2003
- Files of identification information, procurement and maintenance by bureau, 80-2002
- Fingerprints and other information to be furnished by law enforcement officers, 80-2003
 - failure to provide information, salary withheld, 80-2004
- Institutions to furnish identification material for files, 80-2002
- Supervisor of bureau, appointment, 80-2001
- Warden of state prison to supervise bureau, 80-2001

BURGLARY

- Aggravated burglary, elements of offense, punishment, 94-6-204 (2) (3)
- Definitions, 94-6-201
- Elements of offense, punishment, 94-6-204 (1) (3)
- "Enter or remain unlawfully" defined, 94-6-201
- "Occupied structure" defined, 94-2-101 (35)
- Possession of burglary tools, elements of offense, punishment, 94-6-205

BUSINESS CORPORATION ACT

- Actions by and against corporations
 - involuntary dissolution, commencement of action, 15-2289
 - survival of remedy after dissolution, 15-2298
- Administration by secretary of state, 15-22-127
- Annual report of domestic and foreign corporations required
 - contents of report, 15-22-118
 - existing corporations, filing report required, 15-22-136
 - failure to file, penalty, 15-22-125
 - filing of report, 15-22-119
 - fee, 15-22-121
- Appeal from ruling or decision of secretary of state, 15-22-129
- Application of act
 - existing corporations, 15-22-136
 - foreign and interstate commerce, 15-22-137
- Articles of dissolution—See Dissolution, articles of dissolution, below
- Articles of incorporation
 - amendments
 - certificate of amendment, issuance by secretary of state, 15-2256
 - disapproval by secretary of state, appeal to district court, 15-22-129
 - procedure to amend, 15-2253
 - reorganization, amendment of articles, purposes, procedure, 15-2259
 - right to amend, 15-2252
 - vote of shareholders required, 15-2253
 - class voting of amendments, 15-2254
 - articles of amendment
 - certificate of amendment issuance by secretary of state, 15-2256
 - effect of certificate of amendment, 15-2257
 - fee for issuance, 15-22-121
 - contents, 15-2255
 - execution by corporation, 15-2255
 - filing of articles with secretary of state, 15-2256
 - fee for filing, 15-22-121
 - certificate of amendment, issued by secretary of state, effect, 15-2256, 15-2257
 - contents, 15-2248
 - definition, 15-2202
 - disapproval by secretary of state, appeal to district court, 15-22-129
 - fee for filing, 15-22-121
 - filing with secretary of state, 15-2249
 - foreign corporations, amendment to articles, filing, 15-22-109
 - greater voting requirements, 15-22-132
 - restated articles of incorporation, filing, certificate of restatement, issuance and effect of, 15-2258
 - fees for filing, 15-22-121
 - waiver of required notice, 15-22-123

INDEX

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

Assessment of shares, existing corporations, provisions for levying of assessment, 15-22-136

Books and records, examination by shareholders, 15-22-46

Bylaws, adoption, amendment or repeal, 15-22-25

Capital

- amount of stated capital, determination of, 15-22-19
- cancellation of reacquired shares, reduction of stated capital, 15-22-62
- cancellation of redeemable shares, reduction of stated capital, 15-22-61
- fee for filing statement of reduction of stated capital, 15-22-121
- reduction of stated capital, proposal, procedure, 15-22-63
- "stated capital" defined, 15-22-02
- surplus and reserves, 15-22-64

Certificate of incorporation, issuance by secretary of state, 15-22-49

effect of issuance, 15-22-50

fee for issuing, 15-22-121

Consolidation—See Merger or consolidation, below

Corporate laws, application to business trust, 15-25-08

Definitions, 15-22-02

Directors

- classification of directors, 15-22-35
- compensation, 15-22-33
- consent to action taken without a meeting, 15-22-134
- elected at annual meeting of shareholders, 15-22-34
- voting of shares, 15-22-31
- executive and other committees, designation by board, authority, 15-22-38
- liability of directors in certain cases, 15-22-42
- meetings
 - consent to action taken without a meeting, 15-22-134
 - minutes of proceedings, 15-22-46
 - notice of meeting, waiver, 15-22-39, 15-22-133
 - organization meeting, 15-22-51
 - place of holding, 15-22-39
 - quorum of directors, 15-22-37
- number of directors, 15-22-34
- qualifications, 15-22-33
- quorum of directors, 15-22-37
- removal of directors, 15-22-36
- signing of false documents, penalty, 15-22-126
- survival of remedy after dissolution, 15-22-98
- terms of office, 15-22-34, 15-22-35
- vacancies occurring in board, how filled, 15-22-36

Dissolution

- appeal from disapproval by secretary of state, 15-22-129
- articles of dissolution
 - contents, 15-22-85
 - fee for filing, 15-22-121
 - filing of articles, 15-22-86
 - tax clearance certificate, 15-22-85
- attorney general, notice from secretary of state as to corporations subject to involuntary dissolution, 15-22-88
- commencement of action and procedure, 15-22-89
- bulk transfer chapter of commercial code inapplicable to sales, 87A-6-103
- continuation of corporate existence to wind up affairs after dissolution, 15-22-79, 15-22-98
- involuntary dissolution
 - grounds, 15-22-87
 - liquidation proceedings—See Liquidation, below
 - notice to attorney general by secretary of state of corporations subject to dissolution, 15-22-88
 - venue and process, 15-22-89
- license tax for final year, liability for, 84-15-11

INDEX

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

Dissolution (Continued)

- revocation of voluntary proceedings
 - act of corporation, 15-2282
 - consent of shareholders, 15-2281
 - effect of statement, 15-2284
 - execution of statement by officer of corporation, 15-2281, 15-2282
 - statement of revocation, filing, 15-2283
- Small Business Tax Act option, agreement by shareholders to assume personal liability required, 84-1501.3
- statement of intent to dissolve
 - consent of shareholders, 15-2276
 - effect of statement, 15-2279
 - execution by officers of corporations, 15-2277
 - fee for filing, 15-22-121
 - filing with secretary of state, 15-2278
 - procedure after filing of statement, 15-2280
- survival of remedy after dissolution, 15-2298
- unclaimed distribution, when presumed abandoned, 67-2206
- voluntary dissolution
 - act of corporation, 15-2277
 - consent of shareholders, 15-2276
 - incorporators, action to dissolve corporation which has not commenced business, 15-2275
 - revocation of proceedings, fee for filing statement, 15-22-121
 - statement of intent to dissolve, 15-2278 to 15-2280
 - tax clearance certificate, 15-2285

- Distributions from capital surplus, 15-2241
- liability of directors for unlawful distribution, 15-2242

Dividends

- closing of transfer book and fixing record date, 15-2228
- corporations engaged in exploiting natural resources, payment out of depletion reserves, 15-2240
- cumulative dividends paid out of capital surplus, 15-2241
- declaration of by board of directors, 15-2240
- share dividends, 15-2240
- stock issued as share dividend, surplus transferred to stated capital as consideration, 15-2217
- unlawful declaration of dividends, liability of directors, 15-2242

- Evidence, certificates and certified copies issued by secretary of state to be received, 15-22-130

Exchange of property or assets by corporation

- disposition of assets in other than regular course of business, 15-2272
- dissenting shareholders, right to dissent, 15-2273
- regular course of business, 15-2271

Existence of corporation

- continuation of corporate existence to wind up affairs after dissolution, 15-2279, 15-2298
- expiration of existence, notice by secretary of state, 15-22-128
- unauthorized assumption of corporate powers, liability, 15-22-135

Existing corporations continued, 15-22-136

- assessment of shares, provisions for levying of assessment, 15-22-136
- repeal of prior acts, effect, 15-22-139

Expenses of organization, reorganization and financing, payment, 15-2220

Fees

- authority of secretary of state to collect, 15-22-120
- certified copies of documents, fees chargeable for, 15-22-122
- filing documents and issuing certificates, enumeration of fees, 15-22-121
- license fees
 - authority of secretary of state to collect, 15-22-120
 - domestic corporations, fees payable by, 15-22-123
 - foreign corporations, fees payable by, 15-22-124
- miscellaneous charges of secretary of state, 15-22-122

INDEX

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

Foreign corporations

- actions by and against corporation, effect of failure to obtain certificate of authority, 15-22-117
- admission of foreign corporation, 15-2299
- annual report required, contents, 15-22-118
 - filing of report, 15-22-119
- application of act to corporations heretofore authorized to do business in state, 15-22-116
- articles of incorporation, amendment, filing, 15-22-109
 - fee for filing copy of amendment, 15-22-121
- certificate of authority
 - amended certificate, requirements for securing, procedure, 15-22-111
 - application, fee for filing, 15-22-121
 - fee for issuing amended certificate, 15-22-121
 - application, contents, execution, 15-22-103
 - filing of application, 15-22-104
 - failure to obtain certificate, effect, 15-22-117
 - fee for filing application and issuance, 15-22-121
 - issuance of certificate, effect, 15-22-104, 15-22-105
 - limitations on issuance, 15-2299
 - required to transact business in state, 15-2299
 - revocation of certificate of authority
 - appeal from secretary of state, 15-22-120
 - grounds, 15-22-114
 - issuance of certificate of revocation, 15-22-115
- existing corporations, duty to file annual report, 15-22-136
- merger of foreign corporation authorized to do business in state, 15-22-110
 - fee for filing copy of articles of merger, 15-22-121
- merger or consolidation of domestic and foreign corporations, procedure, 15-2270
- name of corporation
 - change of name, 15-22-102
 - reservation of right to exclusive use, 15-2208
 - restrictions on contents of name, 15-22-101
- powers of foreign corporation, 15-22-100
- registered agent required, 15-22-106
 - change of registered agent, 15-22-107
- registered office required, 15-22-106
 - change of registered office, 15-22-107
- service of process on foreign corporation, 15-22-108
- withdrawal of foreign corporation
 - application for withdrawal, contents, 15-22-112
 - filing of application, 15-22-113
 - certificate of withdrawal, requirements for issuance, 15-22-112, 15-22-113
 - fee for filing application and for certificate of withdrawal, 15-22-121

Incorporation

- articles of incorporation—See Articles of incorporation, above
- expenses of organization, reorganization and financing, payment, 15-2220
- organization meeting of directors, 15-2251

Incorporators

- delivery of articles of incorporation to secretary of state, 15-2247
- dissolution of corporation that has not commenced business, 15-2275
- name and address to be included in articles of incorporation, 15-2248
- number, 15-2247
- organization meeting of directors, notice given by incorporators, 15-2251

Invalidity of part of act, effect of, 15-22-140

Leases of property of corporation

- disposition of assets in other than regular course of business, 15-2272
- regular course of business, 15-2271

Liability of persons assuming to act as a corporation without authority, 15-22-135

License fees, 15-22-123, 15-22-124

- authority of secretary of state to collect, 15-22-120

INDEX

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

Liquidation

- assets due unknown creditor or shareholder, deposit with state treasurer, 15-2297
- creditors, grounds for action for liquidation, 15-2290
 - filing of claims and notice, 15-2293
- decree of dissolution
 - effect of decree, 15-2295
 - entry of decree by court, 15-2295
 - filing of decree, 15-2296
- discontinuance of proceedings, 15-2294
- grounds for liquidation of assets and business of corporation, 15-2290
- jurisdiction of district courts, 15-2290
- procedure
 - liquidation by court, 15-2291
 - voluntary dissolution, 15-2280
- receivers
 - appointment by court, 15-2291
 - authority of receivers, 15-2291
 - compensation, 15-2291
 - expenses, payment from assets or proceeds of sales, 15-2291
 - qualifications, 15-2292
- shareholders, grounds for action for liquidation, 15-2290

Merger or consolidation

- appeal from disapproval by secretary of state, 15-22-129
- articles of merger or consolidation, contents, filing, 15-2268
 - fee for filing, 15-22-121
- certificate of merger or consolidation
 - fee for issuing, 15-22-121
 - issuance by secretary of state, 15-2268
 - operation and effect, 15-2269
 - return to surviving or new corporation by secretary of state, 15-2268
- consolidation, procedure by board of directors, 15-2266
- dissenting shareholders, right to dissent, 15-2273
 - filing of objections, payment for shares, procedure, 15-2274
- domestic and foreign corporations merger or consolidation of, procedure, 15-2270
- effect of merger or consolidation, 15-2269
- foreign corporation authorized to do business in state, filing of articles of merger, 15-22-110
- merger, procedure by board of directors, 15-2265
- plan for merger or consolidation, 15-2265, 15-2266
 - abandonment of plan, 15-2267
 - approval by board of directors, 15-2265, 15-2266
 - approval by shareholders, 15-2267
 - subsidiary corporation, 15-2268
 - vote of shareholders required, 15-2267
- subsidiary corporation, merger by, plan, 15-2268

Mortgages, power to give

- disposition of assets in other than regular course of business, 15-2272
- regular course of business, sale or mortgage of assets, 15-2271

Name of corporation

- registration of name
 - fee for registration, 15-2209
 - procedure, 15-2209
 - renewal of registration, 15-2210
- reservation of right to exclusive use, who may make, procedure, transfer, 15-2208
 - fee for filing application, 15-22-121
 - notice of transfer of reserved name, fee for filing, 15-22-121
- restrictions on contents of name, 15-2207

Officers

- authority and duties prescribed by the bylaws, 15-2244
- election by board of directors, 15-2244
- removal of officers, 15-2245
- signing of false documents, penalty, 15-22-126

INDEX

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

Organization of corporation—See Incorporation, above

Penalties

- effect of repeal of prior acts, 15-22-139
- failure of corporation to file annual report, 15-22-125
- signing of false documents by corporate officers or directors, 15-22-126

Pledges of assets by corporation

- disposition of assets in other than regular course of business, 15-2272
- regular course of business, 15-2271

Powers of corporation

- acquisition and disposition of its own shares by corporation, 15-2205
- general powers enumerated, 15-2204
- ultra vires as a defense, 15-2206

Pre-emptive rights of shareholders, 15-2224

Purposes for which organization is allowed, 15-2203

Receivers—See Liquidation, receivers above

Redemption of stock

- cancellation of redeemable shares by redemption or purchase, 15-2261
- statement of cancellation, contents, filing, 15-2261
- restriction on redemption or purchase of redeemable shares, 15-2260
- voting redeemed shares, when prohibited, 15-2231

Registered agent required, 15-2211

- change of registered agent, 15-2212
- statement of change, fee for filing, 15-22-121
- resignation of agent, 15-2212

Registered office required, 15-2211

- change of registered office, 15-2212
- statement of change, fee for filing, 15-22-121

Reorganization

- amendment of articles of incorporation, purposes, procedure, 15-2259
- bulk transfer chapter of commercial code inapplicable to sales, 87A-6-103
- expenses of reorganization, payment, 15-2220

Repeal of prior acts, effect of, 15-22-139

Reports

- annual report of domestic and foreign corporations required—See Annual report of domestic and foreign corporations required, above
- forms to be prescribed by secretary of state, 15-22-131

Reservation of power to amend, repeal or modify, 15-22-138

Sale or mortgage of assets

- disposition of assets in other than regular course of business, 15-2272
- dissenting shareholders, right to dissent, 15-2273
- filing of objections, payment for shares, procedure, 15-2274
- regular course of business, 15-2271

Secretary of state

- appeal from ruling or decision of secretary of state, 15-22-129
- articles of incorporation, filing, 15-2249
- articles of amendment, filing, 15-2256
- cancellation of redeemable shares, filing statement, issuance of duplicate original, 15-2261
- certificate of amendment of articles of incorporation, issuance, effect, 15-2256, 15-2257
- certificate of incorporation, issuance, 15-2249
- evidence, certificates and certified copies issued by secretary of state to be received, 15-22-130

fees and charges

- authority to collect, 15-22-120
- enumeration of fees for filing documents and issuing certificates, 15-22-121
- license fees, 15-22-123, 15-22-124
- miscellaneous charges, 15-22-122

foreign corporations

- certificate of authority
- amendment, procedure, 15-22-111
- issuance, 15-22-104, 15-22-105
- revocation, 15-22-114, 15-22-115

INDEX

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

Secretary of state (Continued)

foreign corporations (Continued)

merger, filing of articles, 15-22-110

withdrawal, issuance of certificate, 15-22-112, 15-22-113

forms for reports to be prescribed by secretary of state, 15-22-131

involuntary dissolution, corporations, subject to notice to attorney general, 15-2288

merger or consolidation of corporations

issuance of certificate, 15-2268

operation and effect, 15-2269

subsidiary corporation, filing of articles, 15-2268

notice of expiration of corporate existence, 15-22-128

power to administer act, 15-22-127

reorganization, amendment of articles, filing, issuance of certificate, 15-2259

restated articles of incorporation, filing, certificate of restatement, 15-2258

voluntary dissolution of corporation

filing of articles of dissolution, 15-2286

revocation of voluntary proceedings, statement of revocation, filing, 15-2283,
15-2284

statement of intent to dissolve, filing with, 15-2278, 15-2279

Service of process on corporation, 15-2213

criminal offenses, service of summons, 95-615

foreign corporations, 15-22-108

Shareholders

action against corporation, defense of ultra vires, 15-2206

actions by shareholders, 15-2243

consent to action taken without a meeting, 15-22-134

definition, 15-2202

dissolution of corporation

act of corporation, vote of shareholders, 15-2277

revocation of voluntary proceedings

act of corporation, action by shareholders required, 15-2282

consent of shareholders, 15-2281

voluntary dissolution by consent of shareholders, 15-2276

examination of books and records of corporation, 15-2246

liability of subscribers and shareholders, 15-2223

liquidation of assets and business of corporation, grounds for action, 15-2290

meetings

annual meeting, 15-2226

closing of transfer books, 15-2228

consent to action taken without a meeting, 15-22-134

minutes of proceedings, 15-2246

notice of meetings, 15-2227

waiver of notice, 15-22-133

place of holding, 15-2226

quorum, 15-2230

record date, fixing of, 15-2228

special meetings, 15-2226

voting list, 15-2229

merger or consolidation, rights of dissenting shareholders, 15-2273, 15-2274

pre-emptive rights of shareholders, 15-2224

sale or exchange of assets, rights of dissenting shareholders, 15-2273, 15-2274

survival of remedy after dissolution, 15-2298

voting list, 15-2229

voting of shares—See Voting powers of shareholders, below

Shares—See Stock, below

Short title of act, 15-2201

Stock

authorized shares, 15-2214

cancellation of shares

fee for filing statement of, 15-22-121

reacquired shares, cancellation of, procedure, effect, 15-2262

redemption or purchase, cancellation of redeemable shares, procedure, effect,
15-2261

INDEX

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

Stock (Continued)

- certificates representing shares
 - form and contents, 15-2221
 - fractional shares, issuance of certificates for, 15-2222
 - scrip, issuance for fractional shares in lieu of certificate, 15-2222
 - classes, division into classes authorized, 15-2214
 - series, issued of preferred or special classes in series, 15-2215
 - consideration for shares, 15-2217
 - money, other property, labor or services, 15-2218
 - payment of the consideration, 15-2218
 - promissory notes and future services do not constitute payment, 15-2218
 - convertibility of shares, limitation on provisions relating to, 15-2214
 - corporation's right to acquire and dispose of its own shares, 15-2205
 - fractional shares, issuance of certificates for, 15-2222
 - payment for shares
 - calls for payment, 15-2216
 - consideration for shares, 15-2217
 - may be money, other property, labor or services, 15-2218
 - default in payment, procedure for collection of amount due, 15-2216
 - promissory notes and future services do not constitute payment, 15-2218
 - preferred or special classes, authority of corporation to issue, provisions relating to, 15-2214
 - issuance in series, 15-2215
 - reacquired shares, cancellation, procedure, effect, 15-2262
 - redeemable shares—See Redemption of stock, above
 - scrip, issuance for fractional share in lieu of certificate, 15-2222
 - series of shares
 - fee for filing statement of establishment of series, 15-22-121
 - issuance of preferred or special classes in series, 15-2215
 - subscription for shares
 - calls for payment, 15-2216
 - default in payment, procedure for collection of amount due, 15-2216
 - liability of subscribers, 15-2223
 - treasury shares
 - consideration, 15-2217
 - voting of prohibited, 15-2231
 - voting of shares—See Voting powers of shareholders, below
- Stockholders—See Shareholders, above
- Stock rights and options, 15-2218
- Subsidiary corporations, merger, 15-2268
- Surplus and reserves, 15-2264
- Transfer books
 - closing of transfer books and fixing record date, 15-2228
 - voting list, preparation by officer having charge of books, damages for failure to prepare list, 15-2229
- Treasury shares, voting of prohibited, 15-2231
- Ultra vires as a defense, 15-2206
- Unauthorized assumption of corporate powers, 15-22-135
- Voting powers of shareholders
 - amendments to articles of incorporation
 - class voting on amendments, when holders entitled to vote as a class, 15-2254
 - vote by shareholders, 15-2253
 - authorized vote of each outstanding share, 15-2231
 - corporation-owned shares, voting prohibited, 15-2231
 - cumulative voting authorized, 15-2231
 - fiduciaries, voting of shares, 15-2231
 - greater voting requirements in articles of incorporation to control, 15-22-132
 - merger or consolidation, vote of shareholders required, 15-2267
 - pledged shares, voting powers of shareholder or pledgee, 15-2231
 - proxies, 15-2231
 - quorum at meetings, 15-2230

INDEX

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

- Voting powers of shareholders (Continued)
 - receivers, voting of shares standing in name of, 15-2231
 - redeemable shares, when not entitled to vote, 15-2231
 - trust, creation of voting trust authorized, 15-2232
 - voting list, 15-2229
- Waiver of notice requirements, 15-22-133

BUSINESS TRUSTS

- Classifications of business trusts, 15-2502
- Commencement of business, when authorized, 15-2504
- Corporate laws, application to business trust, 15-2508
- Definition, 15-2501
- Domestic business trust
 - certificate of organization, 15-2504
 - definition, 15-2502
 - required filings with the secretary of state, 15-2504
 - trust agreement, filing with secretary of state, 15-2504
 - amendments to trust instrument, 15-2505
 - construction of instrument, 15-2506
 - terms and conditions of instrument, binding effect, 15-2506
- Foreign business trusts
 - definition, 15-2502
 - license to do business in state, when issued, 15-2504
 - required filings with the secretary of state, 15-2504
 - trust agreement, filing with secretary of state, 15-2504
 - amendments to trust instrument, 15-2505
 - binding effect of terms and conditions of instrument, 15-2506
 - construction of instrument, 15-2506
- Form of association authorized, 15-2503
- Powers and authority of business trusts, 15-2506
- Secretary of state
 - certificate of organization, issuance to domestic business trust, 15-2504
 - copies of trust agreements, filing with secretary of state, 15-2504
 - amendments to trust instrument, 15-2505
 - license to foreign business trust to do business in state, when issued, 15-2504
- Taxation of business trust, 15-2507

BUTCHERS AND MEAT PEDDLERS

- Inspection and marking of hides of slaughtered cattle
 - departmental inspection in lieu of sheriff's inspection, 46-503
 - emergency or custom slaughter without live inspection, 46-503
 - inspection by department not prohibited, 46-506
- Meat markets, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
- Persons exempted from procuring license for having meat inspected or stamped, 46-504

BUTTER

- See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products, 3-2488 to 3-24-137

C

CADAVERS

- See DEAD BODIES

CAMPGROUNDS

- See TOURIST CAMPS, 69-5601 to 69-5607

CAPITAL PUNISHMENT

- See DEATH SENTENCE
- Appeals, stay of execution, 95-2406

INDEX

References are to Title and Section numbers

CAPITAL PUNISHMENT (Continued)

- Execution of death sentence, procedure, 95-2303
- Mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305
- Offenses not bailable, 1972 Const., II, 21
- Pregnant female, proceedings, 95-2306, 95-2307
- Retention of capital punishment by electors, 1972 Const., Historical Note

CARD GAMES

- See GAMBLING, Card games

CARRIERS

- Common carrier contract modifying carrier's rights and duties, effect, 8-709
- Motor carriers
 - interchange of equipment, 8-103.2
 - lease of power equipment, 8-103.1
 - lease of railroad commission certificate, 8-103.3
- Pipeline carriers, 8-201 to 8-207, 8-209, 8-210—See PIPELINES
- Tramway not a common carrier, 69-6615

CEMETERIES

- Cemetery associations
 - local government to receive evidence of need for cemetery and of financial responsibility of association, 9-111.1
 - zoning and planning requirements of local government, association to comply, 9-10011.1
- County commissioners may establish cemeteries, 9-401
- Per diem and mileage allowance of trustees of public cemetery, 9-207
- Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a) Table A
- Tax exemption of property, 1972 Const., VIII, 5

CENTER FOR THE AGED

- Convalescent release of patients, 80-2503
- Cost of support, payment by resident or responsible person, 80-1601 to 80-1604—See STATE INSTITUTIONS, Cost of support of residents
- Discharge of patients, 80-2503
- Industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
- Location of center, 80-2501
- Management and control of center, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
- Purpose of center, 80-2501
- Transfer of patients to and from other institutions, 80-2502
 - Galen state hospital, 80-1703

CENTRAL PAYROLL SYSTEM

- See SALARIES, Central payroll system, 25-507.1 to 25-507.10

CERTIFIED PUBLIC ACCOUNTANTS

- See PUBLIC ACCOUNTANTS

CERTIORARI

- Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
- Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

CESSPOOLS

- Cleaning of cesspools, 69-5401 to 69-5408—See SANITARY LICENSEES

CHAIN DISTRIBUTOR SCHEMES

- Definition, 94-6-308.1 (1) (b)
- "Person" defined, 94-6-308.1 (1) (a)
- Promotion or sale of participation in scheme as criminal offense, punishment, 94-6-308.1 (2) (3)
 - second offense, punishment, 94-6-308.1 (3)

INDEX

References are to Title and Section numbers

CHANGE OF NAMES

Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

CHANGE OF VENUE

Procedure for change in civil cases, M. R. Civ. P., Rule 12(b)
payment of costs and fees by party filing complaint, 93-2908
Procedure for change in criminal cases, 95-401, 95-1710
justices' and police courts, 95-2003

CHARITABLE INSTITUTIONS AND CORPORATIONS

Institutional funds management, 86-801 to 86-809—See MANAGEMENT OF INSTITUTIONAL FUNDS

CHARITABLE TRUSTS

Treatment as private foundation or split-interest trust for federal tax purposes,
prohibited acts of trustee, 86-707 (1)
amendment of trust instrument to terminate tax treatment, 86-707 (2)

CHARITIES

Appropriations for private purposes prohibited, 1972 Const., V, 11
Economic assistance and social and rehabilitative services, provision for, 1972 Const., XII, 3
Perpetuities prohibited except for charitable purposes, 1972 Const., XIII, 6
Tax exemption for property, 1972 Const., VIII, 5

CHECKS

See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805
Bad check offenses, punishment, 94-6-309

CHEESE

See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products, 3-2488 to 3-24-137

CHILD ADOPTION AGENCIES

Licenses issued by state department, 10-703
"state department" defined, 10-701

CHILDREN AND MINORS

See also GUARDIANSHIPS

Abused, neglected and dependent children or youths, protection as policy of state, 10-1303
confidentiality of records, 10-1308
costs of placement in foster home, reimbursement, 10-1313
investigation of parents' financial ability, 10-1313
payment by parents, order of court, 10-1313
criminal charges against adults, county attorney to file, 10-1322
custody of child, agencies authorized to take, 10-1315
definition of terms, 10-1301
disposition upon judgment, 10-1314
commitment order, form, 10-1314 (3)
legal custody, transfer by court, 10-1314 (1) (2)
modification of order, court to retain jurisdiction, 10-1314 (5)
emergency protective services, 10-1309
evidentiary use of report not subject to privilege, 10-1307
guardian ad litem, appointment by court, 10-1310
hearing of petition, 10-1312
privilege of doctor-patient and husband-wife not applicable, 10-1312 (3)
immunity from liability of person making report, 10-1306
investigation and disposition of report, 10-1305
jurisdiction of youth court concurrent with district courts, 10-1302
petition alleging abuse, neglect and dependency, contents, filing, procedure, 10-1310
criminal prosecution not barred, 10-1310 (3)
relief available, 10-1310 (10)

INDEX

References are to Title and Section numbers

CHILDREN AND MINORS (Continued)

- Abused, neglected and dependent children (Continued)
 - placement in foster homes, payment of cost, 10-1320
 - definition of terms, 10-1316
 - inspection authority, 10-1318
 - license required of foster or boarding home, issuance, 10-1317, 10-1318
 - penalty for operating home without license, 10-1319
 - recovery of costs from parents, 10-1313, 10-1321
 - policy declaration, 10-1300, 10-1303
 - protective services, responsibility to provide, 10-1315
 - temporary protective services and investigative authority, petition and order, 10-1311
 - venue of proceedings, 10-1302
- Adopted children, rights in estate of adopting parent, 91A-2-109
- Age of majority eighteen years for all purposes, 1972 Const., II, 14; 64-101
 - person under eighteen entitled to all rights not specifically precluded, 1972 Const., II, 15
- Apprehending children and holding them in custody, 10-608.1
- Assistance payments, payment to interested person other than original recipient, 71-509
- Bartenders minimum age, 41-1135
 - violation as misdemeanor, 41-1136
- Born after death of parent, rights in estate, 91A-2-108
- Borrowing of money for educational expense, capacity of minors, 64-106.1
- Consolidation of guardianship and protective proceedings authorized, 91A-5-102 (2)—
See PROTECTIVE PROCEEDINGS
- “protective proceeding” defined, 91A-5-101 (2)
- Correctional facilities, establishment, control and management by department of institutions, 80-1410 to 80-1412—See STATE INSTITUTIONS, Juvenile facilities
- Criminal offenses
 - endangering welfare of child, elements of offense, punishment, 94-5-607
 - admissible evidence, 94-5-607 (3)
 - fine or forfeiture for benefit of child, authority of court, 94-5-607 (4)
 - interference with custody of child, 94-5-305
 - nonsupport of child, elements of offense, punishment, 94-5-608
 - fine or forfeiture for benefit of child, authority of court, 94-5-608 (4)
 - refrigerator or other container, discarding where attractive to children, punishment, 94-8-108
 - unlawful possession of intoxicating substance by child, punishment, 94-5-610
 - unlawful transactions with children, elements of offense, punishment, 94-5-609
 - explosives, selling or giving to child, 94-5-609 (1) (a)
 - intoxicating substances, selling or giving to child, 94-5-609 (1) (b)
 - junk dealer, pawnbroker or secondhand dealer, receiving or purchasing goods from child, 94-5-609 (1) (c)
- Criminal responsibility, 94-2-109 (1)
- Custody proceedings, 48-331 to 48-341—See MARRIAGE AND DIVORCE, Custody of child
- Day care facilities, licensing and regulation, 10-801 to 10-811—See DAY CARE FACILITIES
- Delegation of powers by guardian or parent, 91A-5-104
- Delinquent children
 - district youth guidance home, placement in by district judge, 10-1246
 - continuing jurisdiction of district court, 10-1248
 - department of institutions placing juvenile, 10-1250
 - petition by juvenile for placement in home, 10-1247
 - support payments required of parents, 10-1249
- Destruction of property by child, liability of parents, 61-112.1
 - amount of recovery, 61-112.2
 - attorney's fee, 61-112.2
- Force to restrain or correct child or pupil, justifiable use of by parent, guardian or teacher, 94-3-107
- Galen state hospital, juvenile reception and evaluation center, 80-1704
- Gambling, minor's participation prohibited, 62-709, 62-721, 62-730

INDEX

References are to Title and Section numbers

CHILDREN AND MINORS (Continued)

- Guardians of minors, 91A-5-201 to 91A-5-212
 - court appointment of guardian, 91A-5-204 to 91A-5-207
 - acceptance of appointment by guardian, effect, 91A-5-208
 - appointment of testamentary nominee over minor's objection, 91A-5-203, 91A-5-204
 - conditions required for appointment of guardian, 91A-5-204
 - jurisdiction of court, 91A-5-102
 - nominee of minor, when appointed, 91A-5-206
 - procedure for appointment, notice, 91A-5-207
 - qualifications of guardian, 91A-5-206
 - termination of appointment, 91A-5-210
 - venue of proceedings, 91A-5-205
 - duration of guardianship status, 91A-5-201
 - "guardian" defined, 91A-1-201 (17)
 - guardianship status effective upon valid appointment, 91A-5-201
 - jurisdiction of court, 91A-5-102
 - acceptance of appointment by guardian as submission to jurisdiction of court, 91A-5-208
 - concurrent jurisdiction, 91A-5-211
 - notice to guardian of proceedings, how given, 91A-5-208
 - proceedings subsequent to appointment, jurisdiction and venue, 91A-5-211
 - letters of guardianship to indicate method of appointment, 91A-5-208
 - married person as guardian, 36-127
 - "minor ward" defined, 91A-5-101 (4)
 - powers and duties of guardian, 91A-5-209
 - removal of guardian, petition, notice, hearing, procedure, 91A-5-212
 - resignation of guardian, petition, notice, hearing, procedure, 91A-5-212
 - termination of guardianship, 91A-5-210
 - testamentary appointment effective upon acceptance by guardian, notice, formal requirements, exception, 91A-5-202
 - appointment prevented or terminated by objection of minor of fourteen years or older, 91A-5-203
 - court appointment of testamentary nominee over minor's objection, 91A-5-203
 - termination of appointment if will denied probate, 91A-5-210
- Health information given to state department or medical association, privilege, 69-4115
- Illegitimate children, right to inherit, 91A-2-109
- Interference with custody as criminal offense, punishment, 94-5-305
- Interstate compact on juveniles
 - additional procedure for return of runaway juveniles, 10-1006
 - administrator, 10-1002
 - financial obligations, discharge, 10-1004
 - ratification, text, 10-1001
 - responsibilities of state departments, agencies and officers, 10-1005
 - supplementary agreements by compact administrator, 10-1003
- Interstate compact on placement of children, 10-1401 to 10-1409
 - agreements with other party states authorized, requirements for financial commitment, 10-1405
 - certain other laws not applicable, 10-1407
 - department of social and rehabilitation services, status and duties under compact, 10-1403, 10-1404
 - enactment of compact into law, 10-1401
 - financial obligation or commitment, approval required, 10-1405
 - financial responsibility for placement of child, determination, 10-1402
 - governor as "executive head," 10-1409
 - jurisdiction retained by court, 10-1408
 - text of compact, 10-1401
 - visitation, inspection and supervision requirements, how met, 10-1406
- Medical, surgical or psychiatric treatment on consent of minor, 69-6101 to 69-6107
 - abortion, law not applicable to, 69-6104
 - divulgence of information by health professional, 69-6102
 - emergencies and special situations, 69-6104

INDEX

References are to Title and Section numbers

CHILDREN AND MINORS (Continued)

Medical, surgical or psychiatric treatment (Continued)

- financial responsibility for services rendered, 69-6103
- health conditions to which law applicable, 69-6101, 69-6104
- "health professional" defined, 69-6105.1
- immunity from liability, 69-6105
- incapacity of minor to give consent, consent not required, 69-6104
- minors to whom law applicable, 69-6101
- pregnancy or venereal disease suspected, minor's consent valid, 69-6101
 - negative results, consent remains valid, 69-6103
 - surgery not directly connected with pregnancy not included, 69-6104
- psychiatric or psychological counseling, minor's consent valid, 69-6106
 - immunity of physician or psychologist, 69-6107
- sterilization, law not applicable to, 69-6104

"Minor ward" defined, 91A-5-101

Neglected child—See **Abused, neglected and dependent child**, above

Newborn infants, metabolic testing required, 69-6711

administration of law, adoption of rules, 69-6712

Boulder River School to render assistance, 69-6713

definition of terms, 69-6710

results of test, persons to be advised, 69-6713

Pretermitted child, rights in estate of parent, 91A-2-302

Protective proceedings in relation to estate and affairs of minor, 91A-5-401 to 91A-5-431—See **PROTECTIVE PROCEEDINGS**

Representation in actions by and against, M. R. Civ. P., Rule 17(c)

Service of process on minors, M. R. Civ. P., Rule 4D(2)

Small amounts due minor, facility of payment, 91A-5-103

Sports pools, minors not to participate in, 62-730—See **GAMBLING**, Sports pools

Support, children by former marriage, 61-117

Unlawful operation of motor vehicle by child under 18

court learning of unlawful operation, action which may be taken after hearing or investigation, 32-21-165

exclusive jurisdiction of district court, 32-21-163

impounding of vehicle, when, 32-21-163

penalty, 32-21-163

summoning of child, 32-21-164

Workmen's compensation coverage of juveniles in delinquency prevention or rehabilitation programs, 92-411

Youth guidance centers, 10-1101 to 10-1111 redes. 10-1242 to 10-1252—See **YOUTH GUIDANCE CENTERS**

joint centers, establishment by two or more counties, 16-1008B

CHILDREN'S CENTER

Commitment of child to center, records to accompany child, 80-2103

Cost of support, payment by resident or responsible person, 80-1601 to 80-1604—See **STATE INSTITUTIONS**, Cost of support of residents

Discharge of child from center, 80-2104

Fishing by inmates, license not required, 26-202.1

Incorrigible child, commitment to vocational school or industrial school, 80-2105

Industrial activities permitted, 80-1501 to 80-1503—See **STATE INSTITUTIONS**,

Industrial activities permitted

Location of center, 80-2101

Management and control of center, 80-1401 to 80-1406—See **STATE INSTITUTIONS**, Department of institutions

Medical examination before commitment of child to center, 80-2103

Mentally ill or retarded child, transfer to state hospital or state training school and hospital, 80-2106

Purpose of center, 80-2101

Superintendent to manage center, 80-2102

Transfer of children to other institutions

Boulder river school and hospital, 80-2106

juvenile facilities of department of institutions, 80-2105

Warm Springs state hospital, 80-2106

Tuition payments for inmates attending Twin Bridges high school, 75-6319

University aid to children resident at center, 80-2107

INDEX

References are to Title and Section numbers

CHIROPODISTS

Acupuncture, license required for practice of, 66-3401 to 66-3417—See ACUPUNCTURE

Board of podiatry examiners

- administrative services provided by department, 82A-1603
- allocation to department for administrative purposes, 82A-1602
- compensation of board members, 66-608
- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.6
- expenses of board, payment, 66-608
- legal assistance in hearings by board, 82A-1604
- members, selection, qualifications, and terms, 82A-1602.6
- moneys received by board, disposition, 66-607
- retention of functions by board, 82A-1605

Corporations for practice of chiropody, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS

Designation of license and licensees, 66-605

Disability insurance, freedom of choosing physician under disability insurance, 40-4108
scope of practice not enlarged, 40-4109

Drug trade prohibited to practitioners, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners

Examination of applicants for license, 66-603

Malpractice, statute of limitations, 93-2624

Reciprocal license without examination, fee, 66-603

CHIROPRACTORS

Acupuncture, license required for practice of, 66-3401 to 66-3417—See ACUPUNCTURE

Board of chiropractors

- administrative services provided by department, 82A-1603
- annual election of officers by board, 66-503
- appointment, qualifications and terms and removal of members, 82A-1602.7
- compensation and expenses of members, 66-513
- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.7
- legal assistance in hearings by board, 82A-1604
- meetings, quorum, 66-503 (2)
- moneys received by board, disposition and use, 66-513
- oaths and affidavits, power of board, 66-503 (3)
- record of board proceeding to be kept by department, open for public inspection, 66-503
- retention of functions by board, 82A-1605
- seal, adoption required, 66-503 (3)

Corporations for practice of chiropractic, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS

Disability insurance, freedom of choosing physician under disability insurance, 40-4108
scope of practice not enlarged, 40-4109

License applicants, examination, 66-506

Malpractice, statute of limitations, 93-2624

Practice without license unlawful, 66-504 (1)

Temporary permit to practice issued pending examination for license, 66-504 (2)

CHURCHES

See also RELIGION

Religious corporation sole, 15-2401 to 15-2413—See RELIGIOUS CORPORATION SOLE ACT

Sanitary inspections and correction of conditions by boards of health, 69-4118

CIGARETTE SALES

Actions for enforcement of act, 51-313

Competitive pricing in good faith permitted, 51-308

INDEX

References are to Title and Section numbers

CIGARETTE SALES (Continued)

- Contracts in violation of law void, 51-309
- Damage actions for violation of act, 51-313
- Definition of terms, 51-303
- Enforcement powers of board of equalization, 51-314
- Hearings by board on violations of act, 51-314
- Injunction to prevent violations of act, 51-313
- Judicial review of board actions, 51-314
- Legislative findings, 51-301
- Licenses and permits, revocation or suspension for violations of act, 51-314
- Penalty for violations, 51-304
- Policy of state, 51-301
- Price-cutting as evidence of intent to injure competitor, 51-304
- Rules and regulations for enforcement of act, 51-314
- Sales below cost prohibited, 51-304
 - clearance sales exempt, 51-307
 - combination sales, determination of cost in, 51-306
 - competitive pricing exempt, 51-308
 - concealment of true cost as bearing on good faith, 51-310
 - customary trade practices as evidence of cost, 51-310
 - damaged merchandise, sale exempt, 51-307
 - definitions of cost, 51-303
 - fiduciary sales exempt, 51-307
 - isolated transactions exempt, 51-307
 - judicial sales exempt, 51-307
 - liquidation sales exempt, 51-307
 - promotional merchandise not considered in cost, 51-310
 - purchases outside ordinary trade channels not considered in determining cost, 51-311
 - survey evidence, use in determining cost, 51-312
 - wholesalers, definition of cost in sales between, 51-305
- Short title of act, 51-302
- Surveys to determine lowest cost, 51-312
 - competitive prices, use of survey in determining, 51-308
- Unlawful practices enumerated, 51-304

CITIES AND TOWNS

- Airports, establishment, 1-801 to 1-803—See AERONAUTICS, City and county establishment of airports
- Aldermen
 - residence requirements for eligibility, 11-714
 - salaries, 11-725
- Alley approaches, construction or replacement by assessment without formation of special district, 11-2226.1
- All-purpose exclusive tax levy, 84-4701.1 to 84-4701.6—See TAXATION, Levy of taxes, all-purpose exclusive levy
- Ambulance service
 - establishment authorized, 69-3601
 - joint service authorized, 69-3601
 - methods of operation, 69-3602
 - previously existing service unaffected, 69-3603
- Annexation of contiguous areas, 11-514 to 11-525
 - annexation ordinance, adoption, effect, 11-520
 - capital improvements within area to be annexed, approval of financing plan by freeholders required, 11-518
 - definition of terms, 11-516
 - disapproval by resident freeholders stays proceedings for one year, 11-520
 - inconsistent laws superseded, 11-525
 - initiation of annexation proceedings by governing body or by freeholders, procedure, 11-517
 - judicial review, procedure, 11-522, 11-523
 - legislative declaration of policy, 11-515
 - municipal expenditures, purposes for which authorized, 11-524
 - order of annexation, filing, effect, 11-521

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

Annexation of contiguous areas (Continued)

- provisions supplemental to other laws, 11-525
- resolution of governing body of intention to annex, notice, hearing, findings, 11-520
- services to be extended to annexed area, plan required, contents, procedure, 11-518
- severability of provisions, 11-525
- title of act, 11-514
- uniform legislative standards established, 11-515
 - meeting of standards required before annexation, 11-519

Annexation of contiguous platted tracts or other parcels of land, procedure, 11-403

- electric service in annexed area, right to provide, 70-505
- water or sewer service, requiring consent to annexation as condition, 11-1001

Annual financial statement transmitted to department of community affairs, special examination on failure, 11-806

Armories, participation in building, 77-2006

Bond issues

- limitation of actions and defenses relating to issuance of bonds, 93-2612
- maximum interest rate, 79-2602
 - definition of terms, 79-2601
- redemption before maturity of bonds held by state, 79-1105
- sale of bonds, notice to board of investment required, waiver, 79-1102, 79-1103

Bonds, official

- adequacy of bond, determination, 6-603
- amount of bonds, 6-602
- commission and commission-manager governments, 6-608
- companies authorized to write bonds, 6-604
- competitive bids to be sought, 6-602
- conditions in bond, 6-606
- form of bonds, approval, 6-605
- premiums, payment out of budget, 6-607
- purchase by council or commissioners, persons covered, 6-601

Bridges within municipalities, construction and maintenance, 32-2902

- police regulation, 32-2905

Budget, notice, hearing, adoption, fixing of tax levy, 11-1406

- copy of budget and tax levy to be forwarded to department, salary of city clerk withheld for failure, 11-1406 (6)
- duties of department, 11-1411

Carrying concealed weapon prohibited, punishment, 94-8-210—See CONCEALED WEAPONS

- exemptions, 94-8-212

City attorney, salary, 11-729

City clerk, salary, 11-731

- election duties, 23-3502, 23-3503

City-county building, acquisition or construction authorized, 11-4201

- bonding authority undiminished, 11-4203
- contracts between city and county, 11-4202

Clerk of town, duties, 11-805.1

- performance of former duties of town treasurer, 11-805.2

Commission-manager plan of government

- compensation of commissioners and mayor, 11-3248
- primary election for commissioners, 11-3215

Continuity in government, constitutional basis, 1972 Const., III, 2; 82-3001 to 82-3809—See WAR, Continuity in government

Contracts

- advertising, letting of, 11-1202
- awarding, 11-1202
- division of contracts to circumvent bidding procedures prohibited, 11-1202.1
- emergency contracts, when authorized, 11-1202
- highways, streets and roads, contracts with department of highways or federal agencies, 11-1023

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

Contracts (Continued)

- installment payments, 11-1202

- preference to Montana bidders

 - federal aid projects exempt, 82-1926

 - percentage differential, 82-1924

 - provision in contracts for preference to Montana materials and labor, 82-1926

 - residence, definition, determination of, 82-1925, 82-1925.1

- submission to electors at election, when required, 11-1202

County road machinery, use permitted, 32-2807

Decision-making process, public right of participation in, 1972 Const., II, 8

Deferred compensation plan for employees authorized, 68-2701 to 68-2709—See DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

Deposit of public funds by treasurer, 16-2618

Disaster emergency tax, city-county

- council meeting, 11-4303

- definitions, 11-4301

- determination of disaster, resolution of disaster committee, 11-4302

- levy of tax to cover expenses, 11-4305

- resolution stating emergency, 11-4304

- surplus held in separate fund, 11-4306

Disincorporation, 11-308 to 11-321

- cessation of existence of or failure to function by governing body, 11-308

 - order of disincorporation, filing, effective date, 11-314

- collection of amounts due corporation, county succeeding to rights of city or town, 11-320

- costs and expenses, payment, 11-321

- election to disincorporate, notice, 11-309

 - conduct of election, 11-311

 - form of ballot, 11-310

 - insufficient vote, limitation upon subsequent election, 11-312

 - order of disincorporation upon vote of electors, 11-313

- financial statement of municipality to be certified to county commissioners, contents, 11-315

- indebtedness and obligations of city or town, provision for payment, 11-317

 - insolvency of city or town, tax levy authorized, 11-318

- indebtedness to municipality to be collected, 11-317

- police court records to be transferred to nearest justice of the peace, disposition of unfinished business, 11-316

- public property to be released to county commissioners, 11-316

- surplus assets transferred to county general fund, 11-319

- unencumbered cash to be delivered to county treasurer, disposition, 11-315

Ditches, municipal regulation, 11-4001 to 11-4006

- declaration of nuisance, 11-4002

- investigative powers of governing body, 11-4003

- irrigation ditches exempt, 11-4006

- notice to close and fill ditch, 11-4004

- protective devices, owner providing, 11-4005

- purpose of act, 11-4001

Elderly persons, municipal tax levy for support of activities of, 71-1701

Elections

- registration of electors, 11-715

- review of structure of government, time for, when required, 1972 Const., XI, 9

Employees, hours of work of salaried personnel, 59-510(2)

Establishment of local government units by law, 1972 Const., XI, 1

Examination of accounts by department of community affairs, 82-4501 to 82-4514—See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit

Expenditures, strict accountability for, 1972 Const., VIII, 12

Financial statement, copies presented to council and department of intergovernmental relations, 11-806

Fire codes, adoption authorized, 11-1102

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

Fire departments

fire department relief associations

contributions of firemen returned upon separation from service, 11-1911

contributions payable to beneficiary or estate, 11-1927.1

examination of accounts, 82-4502, 82-4503

financial records, examination, 11-1923

investment of surplus funds, 11-1914

pensions payable

disability pension, 11-1926

firemen retired prior to July 1, 1973, 11-1927.2

service pension, 11-1925

spouse and orphan pensions, 11-1927

premium tax collected from insurers

additional levy for retired firemen, or their widows and orphans, 11-1927.2

amount of tax, 11-1919

estimates of payments into treasury fund, 11-1920

payment by state treasurer, 11-1921

payments by state auditor to cities or towns, 11-1919

risk covered by taxable premiums, 11-1919

tax levy for disability and pension funds, 11-1912

mutual aid agreements authorized, 11-1901

wages of firemen, longevity pay requirement based on statutory minimum, 11-1932.1

minimum wages in cities of first and second class, 11-1932

Fire protection in unincorporated towns

disability and insurance benefits of firemen

administration of act by department, 11-2026

allowance and payment of claim by department, 11-2025

benefits allowable, 11-2023

claims for compensation, filing and procedure, 11-2024

earnings of money in earmarked revenue fund, 11-2028

payment of claims, 11-2025

premium tax paid into earmarked revenue fund, 11-2030

qualification for benefits, 11-2023

reports to governor by retirement system, 11-2029

surplus in compensation account, annual division among recipients, 11-2022

fire districts

change of boundaries, 11-2008

contracts with cities and towns and private services for fire protection, 11-2008

creation, 11-2008

dissolution, 11-2008

examination of accounts, 82-4506

trustees, 11-2010

powers, 11-2010

fire insurance premium tax deposited into volunteer fireman's compensation fund,

amount, 11-2030

mutual aid agreements, 11-2010

premium tax paid into earmarked revenue fund, 11-2030

training program conducted by chief, 11-2007

Flood control, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION

Gambling offenders, officer receiving money or thing of value for protection as felony, 94-8-417

Group insurance for officers and employees, 11-1024

Health, board of, 69-4501 to 69-4509—See HEALTH, LOCAL BOARDS OF

Highways bypassing municipality, consent of governing body required, 32-1628

Highways, streets and roads, contracts with department of highways or federal agencies for construction, 11-1023

Highways through municipality, cost of construction and maintenance, 32-1627

Impact grants for large-scale coal development affecting city or town, 50-1801 to 50-1810—See MINES AND MINING, Large-scale coal development

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

Indebtedness

electors at elections concerning

persons entitled to vote, 11-2310

registration, 11-2310

extraordinary levies to pay bonded indebtedness, 84-4701.6

form and execution of bonds, 11-2316

limitation of actions and defenses relating to issuance of bonds, 93-2612

limitation on incurring, 1889 Const., XIII, 6; 1972 Const., VIII, 10

power to incur, 11-966

purposes for which indebtedness may be incurred, 11-966

use of loan proceeds for purposes specified, 1972 Const., VIII, 11

Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT

Initiative and referendum powers extended to electors, 1972 Const., XI, 7, 8

Insurance against tort liability, participation in state plan authorized, 82-4301 to 82-4327

—See STATE OF MONTANA, Tort claims against governmental entities

Intergovernmental co-operation, 1972 Const., XI, 7; 11-4101 to 11-4116; 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION

Investment of surplus bonds in warrants, government securities and bank deposits, 11-1310

Joint library services with unit of university of Montana located in city or town, 44-213—See LIBRARIES, Joint library services

Justice of the peace acting as police judge, compensation, 11-727

Legislative enactment imposing duties on municipality to provide means of financing, 43-517

certain enactments excepted, 43-518

Library federations authorized, 44-131, 44-212 to 44-215—See LIBRARIES, Library federation

Limitation on indebtedness, 1972 Const., VIII, 11

Local government study commissions to be established, 16-5101 to 16-5115—See LOCAL GOVERNMENT STUDY COMMISSIONS

“Local government units” defined, 1972 Const., XI, 1

Mayor

gambling offenses, enforcement duties, 94-8-415

qualifications for office, 11-710

salary, 11-725

Meat and dairy processing and other facilities, inspection by municipality authorized, 46-217

Mental health facilities, establishment by division of mental hygiene, 80-2406

Motor vehicle yards, power to regulate, 11-918

Officers of city or town

code of ethics, 1972 Const., XIII, 4

recall of elective officer under mayor-council form, 11-721.1

residence requirements, 11-713

Off-street parking facilities

acquisition and construction, power of municipality, 11-986

eminent domain, acquisition of existing facilities by, procedural requirements, 11-3708

funding or refunding bonds, 11-3721

indenture for security of bonds, 11-3714

interest on bonds, 11-3717

Open meetings of public agencies

legislative intent, 82-3401

meetings to be open, exceptions, 82-3402

minutes to be available for public inspection, 82-3403

Open-space land, 62-601 to 62-609—See PARKS

Optional forms of government, 1972 Const., XI, 3

Ordinances

recording and numbering in ordinance book, 11-1102

technical codes, adoption by reference, 11-1102

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

Parks, donation of county land for, 16-1131

Planning and zoning—See **PLANNING AND ZONING**

Police department

annual report of board of trustees, condition of fund, 11-1836
payments to police reserve fund, disposition, 11-1836

appointment of persons to do police duty who are not members of police department, authority of mayor, 11-1806

consolidation with sheriff's office in certain counties, 16-2726 to 16-2730—See **COUNTIES**, Department of public safety

fingerprints taken on felony arrest, 80-2003

salary of officer withheld on failure to furnish information, 80-2004

fund for payment of officers on reserve list, 11-1823

tax levy, 11-1823

funding, tax levy authorized, 11-1024.4

gambling offenses, duties of chief of police, penalties for neglect, 94-8-414, 94-8-416

group insurance for policemen authorized, payment of premium, 11-1024.3

identification bureaus, assistance by state bureau in establishing, 80-2006

law enforcement teletypewriter communications committee, membership of chiefs of police, 82-3902

overtime compensation of members in cities of first and second class, 11-1832.2

pensions unassignable and exempt from process, 11-1821.1

police commission required in certain cities and towns, appointment, qualifications, compensation, 11-1804

qualifications, enumeration of qualifications of policemen, 11-1814

reserve fund, investment, 11-1829

state payments to municipalities with police departments

amount of annual payment, 11-1834

insurance premium tax as source of payments, 11-1835

retirement reserve fund, credit of payments to, 11-1836

use of funds in municipalities not subject to retirement law, 11-1837

state-wide fund established for police reserve officers of cities of first and second class, 11-1838

actuarial valuation to be made biennially, 11-1829

additional service by eligible officers, benefit payments, 11-1843, 11-1844

administration by department of administration, 11-1841

benefits not subject to legal process, 11-1845

board of trustees abolished, functions transferred, 82A-222, 82A-223

cities of other classes eligible, 11-1838, 11-1850

cost-of-living increases in benefits, calculation, 11-1846

death benefits, 11-1844

definitions, 11-1839

deposit by city or town, tax levy authorized, 11-1823

disability benefits, 11-1844

existing funds transferred to department of administration, 11-1840

forms to be provided by department, 11-1848

investment of funds, 11-1829

payment of benefits, 11-1844

police reservists now receiving benefits unaffected, 11-1849

qualifications for police reserves, 11-1843

retirement benefits, 11-1844

return of contribution upon termination of service, 11-1847

salary deduction from police officers, amount, 11-1825

sources of funds, 11-1823 to 11-1826

state payments, sources of funds, 11-1835

status of police officers to be provided department, 11-1842

suspension of policemen by mayor or chief of police

appeal, 11-1806

authority, 11-1806

limitation on length of suspension, 11-1806

wages of members, longevity pay requirement based on statutory minimum, 11-1832.1

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

- Police judge, salary, 11-726
 - justice of the peace acting as police judge, compensation, 11-727
- Post-enemy attack, continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
- Powers in general, 1972 Const., XI, 4
 - self-government powers, 1972 Const., XI, 6
- Property exempt from taxation, 1972 Const., VIII, 5
- Property transactions with county or political subdivision, 11-964.1, 11-964.2
 - counties authorized to transact, 16-1007.1, 16-1009.1
- Public transportation in cities, allocation of funds in aid of, 11-4513
- Records, destruction of old and worthless records, 59-515
 - fiscal transactions, record destruction after period of years, 59-516
- Revenue bonds
 - advertisement of bond issue, 11-2404
 - authorization of bond issue, 11-2404
 - definition of terms, 11-2402
 - election to authorize bonds discretionary with governing body, 11-2404
 - negotiability of bonds, 11-2404
 - refunding revenue bonds, terms, issue, and disposition of proceeds, 11-2414
 - terms of bonds, 11-2404
- Review of structure of government, when required, 1972 Const., XI, 9
- Road fund, sources, disposition and use, 53-122
 - flood control project, use for, 89-3308
- Rules of civil procedure, application to special statutory proceedings, M. R. Civ. P., Rule 81(a), Table A
- Savings and loan associations and building and loan associations as approved depositories of city or town funds, security required, 16-2618
 - demand deposits placed only in banks, 16-2618 (4) (a)
 - distribution of deposits among qualified depositories, 16-2618 (4) (b)
- Self-government charters, establishment authorized, procedure, 1972 Const., XI, 5
 - powers of unit adopting self-government charter, 1972 Const., XI, 6
- Service of process on cities and towns, M. R. Civ. P., Rule 4D(2)
- Sewer service, furnishing to industries and persons outside city, 11-1001
- Shoplifting, power of council to define as theft and to punish for, 11-990
- Sidewalks, curbs and gutters, construction without improvement district, 11-2226
- Soil and water conservation districts
 - appointment of supervisors, 76-107
 - definition of municipality as "land occupier," 76-103
- Sovereign immunity abolished, 1972 Const., II, 18
- Special assessments, maximum interest rate, 79-2603
 - definition of terms, 79-2601
- Special improvement districts
 - assessments combining area, lineal foot and lump sum bases, 11-2214
 - bid security to accompany proposals or bids, 11-2209
 - bond required of contractor or contracting owner, 11-2213
- bonds and warrants
 - form, 11-2231
 - interest rate, maximum paid, 79-2602
 - definition of terms, 79-2601
 - provisions, 11-2231
 - redemption, 11-2231
 - refunding of revenue bonds, 11-2218
 - revenue bonds for water and sewer systems, 11-2218
 - signing, 11-2231
 - constitutional authority, 1972 Const., VIII, 5
 - interest on assessments, 11-2227
 - investment of interest and sinking fund moneys, 11-2288
 - lighting districts authorized, 11-2201
 - notice of resolution of intention, contents, persons to whom given, 11-2204
 - off-street parking and pedestrian malls
 - assessments and bonds, 11-2214.2

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

- Special improvement districts (Continued)
 - off-street parking and pedestrian malls (Continued)
 - authority to create improvement districts, 11-2201
 - bonds, authority to issue, 11-2214.1
 - leasing of real property, 11-2214.4
 - payment of assessments, 11-2214.3
 - resolution of intention, publication and adoption, 11-2214.5
 - purposes for which authorized, 11-2202
 - revolving fund surplus, investment, 11-2272
 - special assessments, maximum interest paid, 79-2603
 - definition of terms, 79-2601
 - underground utility facilities, district for, 70-601 to 70-635—See PUBLIC UTILITIES, Underground conversion
 - warrants and bonds, form, 11-2231
- Strong mayor form of government authorized, 11-802.1
- Subdividing and platting of land, 11-3859 to 11-3876—See PLANNING AND ZONING, Subdividing and platting of land
- Taxation—See TAXATION, Cities and towns
 - all-purpose annual levy, 84-4701.1 to 84-4701.6
- Temporary commission on local government established, 16-5116 to 16-5121
- Third class cities
 - appointment of police commission upon request of policemen, 11-1804.1
 - county attorney, authority to retain to provide legal services, 11-702
- Treasurer, salary, 11-728
- Unsanitary or unsafe dwellings, city assistance to rehabilitation of, 11-1025
- Urban renewal law
 - "agency" defined, 11-3901
 - annual report of urban renewal agency, 11-3916
 - bidding upon disposition of real property, 11-3909
 - "blighted area" defined, 11-3901
 - blighted areas, finding of public interest in, 11-3902
 - bonds
 - bonds issued do not constitute an indebtedness within meaning of constitutional or statutory debt limitations, 11-3910
 - definition, 11-3901
 - general credit of municipality not to be pledged, 11-3910.
 - payment, 11-3910
 - power to issue, 11-3910
 - resolution authorized, 11-3910
 - sale, terms, 11-3910
 - bonds as legal investments, 11-3911
 - borrowing power, 11-3907
 - clearance and redevelopment of blighted areas, inclusion in program, 11-3904
 - "clerk" defined, 11-3901
 - contract powers of municipality, 11-3907
 - co-operation by other public bodies, 11-3913
 - definitions, 11-3901
 - disclosure of interest in property within area, duty of public officers, 11-3918
 - discrimination because of race, creed, color or national origin prohibited, 11-3917
 - election, submission to electors for approval of plan, 11-3906
 - eminent domain
 - compensation, 11-3908
 - power of municipality, 11-3908
 - exercise of powers by municipality itself or by agency or department or other officers, 11-3915
 - fair value in sales or leases by municipality, 11-3909
 - "federal government" defined, 11-3901
 - findings required before exercise of powers, 11-3905
 - interest, direct or indirect in project or property by public officials, commissioners or employees prohibited, 11-3918

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

Urban renewal law (Continued)

- investment of project funds, 11-3907
- legislative finding and declaration of necessity for act, 11-3902
- "local governing body" defined, 11-3901
- "mayor" defined, 11-3901
- "municipality" defined, 11-3901
- "obligee" defined, 11-3901
- operation and maintenance of real property, power of municipality, 11-3909
- "person" defined, 11-3901
- plans, powers concerning, 11-3907
- powers additional and supplemental to other powers conferred by law, 11-3919
- powers of municipality, enumeration, 11-3907
- prevention of spread of blight into areas, inclusion in program, 11-3904
- private enterprise, encouragement of, 11-3903
- program for, 11-3904
- property exempt from taxes, termination of exemption upon sale, lease or disposition, 11-3912
- property, power of municipality to sell, lease or transfer, 11-3909
- "public body" defined, 11-3901
- "public officer" defined, 11-3901
- purchasers or lessees of property, obligation to comply with uses specified in urban renewal plan, 11-3909
- "real property" defined, 11-3901
- "redevelopment" defined, 11-3901
- "rehabilitation" defined, 11-3901
- rehabilitation of blighted areas, inclusion in program, 11-3904
- resolution of required findings, 11-3905
- restrictions in instruments of conveyance to private purchaser or lessee, authority, 11-3909
- short title of act, 11-3920
- surveys and appraisals, power to enter buildings and property for, 11-3907
- taxes on property in urban renewal area, allocation to funds, 11-3921
 - maximum term bonds paid from special fund, 11-3924
 - special fund to pay on bonds, allocation of city taxes, 11-3921
 - "taxes" defined, 11-3921 (2)
 - time when act applies, 11-3922
 - unexpended special funds, disposition, 11-3923
 - use of funds generated by sale of bonds, 11-3925
- tax exemption of property, termination of exemption upon sale, lease or other disposition, 11-3912
- title of purchaser, 11-3914
- urban renewal agency
 - annual report, 11-3916
 - commissioners
 - appointment, 11-3915
 - expenses, 11-3916
 - meetings, 11-3916
 - removal, 11-3916
 - term of office, 11-3916
 - definition, 11-3901
 - determination that agency shall exercise powers, 11-3915
 - employees, 11-3916
 - powers, 11-3915
- "urban renewal area" defined, 11-3901
- urban renewal plan
 - definition, 11-3901
 - hearing on, 11-3906
 - notice of hearing on, 11-3906
 - preparation, who may prepare, 11-3906
 - submission to electors at election, 11-3906
 - submission to planning commission of municipality, 11-3906

INDEX

References are to Title and Section numbers

CITIES AND TOWNS (Continued)

- Urban renewal law (Continued)
 - urban renewal project
 - approval by local governing body, 11-3906
 - definition, 11-3901
 - determinations required, 11-3906
 - modification, 11-3906
 - workable program, 11-3904
- Warrants, investment of municipal funds in, 11-1310
- Water conservation, 89-3301 to 89-3313—See **FLOOD CONTROL AND WATER CONSERVATION**
- Water, furnishing to industries and persons outside city, 11-1001
- Wheelchairs, operation of self-propelled units on streets authorized, 11-911.1
 - regulation by municipality, 11-911.2
- Winter work programs, 41-1901 to 41-1907—See **WINTER WORK PROGRAMS**

CITY AND COUNTY CONSOLIDATION

- Fire districts preserved, 11-3523
- Firemen's disability and pension funds, rights preserved, 11-3524
- Firemen, tenure, 11-3524
- Limit on indebtedness of consolidated local government, 16-2010.1
- Police officers, tenure, 11-3518
- Police reserve fund, vested rights preserved, 11-3518
- Voluntary fire departments preserved, 11-3523

CITY COURTS

- See also **JUSTICES' AND POLICE COURTS** in bound volume index
- Annual training session for judges, mileage and per diem allowed for attendance, 93-411 (2)
- Conditions under which judge cannot act, 11-1604
- Criminal cases, procedure, 95-2001 to 95-2009—See **CRIMINAL PROCEDURE**, Police courts
- Criminal jurisdiction, 95-303
- Disqualification of judge, requirements and procedure, 95-1709
- Establishment of city court, always open, 11-1601
- Fines for city ordinance violations tried on appeal, disposition of, 95-2008.1
- Judges, salaries, 11-729
- Jurisdiction of city courts, 11-1602
- Police courts renamed city courts, 93-411 (1)

CIVIL DEFENSE

- "Civil defense" defined, 77-2302
- Continuity in government, 1972 Const., III, 2; 82-3801 to 82-3809—See **WAR**, Continuity in government
- Definition of terms, 77-2302
- Department of military affairs responsible to governor for carrying out program, 77-2303
 - duties of department, 77-2303, 77-2305
 - other agencies to co-operate, 77-2303 (b)
- Gifts, grants and loans, acceptance authorized, 77-2309
- Governor, civil defense responsibility and duties, 77-2304
- Immunity from liability, exceptions, 77-2308
- Local organizations of civil defense, 77-2307
 - director, appointment, responsibility, 77-2307 (1)
 - responsibility of political subdivisions, 77-2307 (2)
- Mutual-aid arrangements between public and private agencies, 77-2306
- Personnel, qualifications, oath, 77-2311
- Policy and purpose, 77-2301
- Political activity prohibited, 77-2310
- "Political subdivisions" defined, 77-2302

CIVIL PROCEDURE

- Administration of justice without sale, denial or delay, 1972 Const., II, 16

INDEX

References are to Title and Section numbers

CIVIL PROCEDURE (Continued)

- Attorney fees, contractual right to recovery reciprocal, 93-8601.1
- Courts open to every person, 1972 Const., II, 16
- Due process of law, 1972 Const., II, 17
- Eminent domain, 1972 Const., II, 29
- Employment injury, right of employee to redress for, 1972 Const., II, 16
- Federal rules, adoption, M. R. Civ. P., Rules 1 to 86
 - administrative bodies, act not to affect powers concerning rules governing practice, 93-228
 - adoption by legislature before rules effective, 93-229
 - amendment of rules, procedure, M. R. Civ. P., Rule 86(a)
 - appendix of forms, M. R. Civ. P., Appendix of Forms
 - changes, amendments and additional rules, procedure for accomplishing, 93-230
 - citation of rules, M. R. Civ. P., Rule 85
 - commission
 - appointment, 93-222
 - duties, 93-222
 - expenses of members, 93-232
 - number of members, 93-222
 - organization, 93-233
 - records, 93-233
 - secretary-stenographer, appointment, 93-231
 - selection of members, 93-223
 - services of research agency, power to employ, 93-231
 - forms applicable under rules, M. R. Civ. P., Rule 84, Appendix of Forms
 - local rules of practice, authority for courts to adopt so long as not in conflict with promulgated rules, 93-227
 - proposed rules
 - distribution to bench and bar for consideration and suggestions, 93-224
 - preparation, 93-224
 - purpose of act, 93-221, M. R. Civ. P., Rule 1
 - scope of rules, M. R. Civ. P., Rule 1
 - statutory proceedings, applicability of rules to, M. R. Civ. P., Rule 81(a), Table A
 - tentative final draft
 - hearing on, 93-226
 - submission to supreme court, 93-225
- Imprisonment for debt, 1972 Const., II, 27
- Local rules of practice, authority to adopt, 93-227, 93-2801-4, M. R. Civ. P., Rule 83
- Poor person may sue or defend without costs, 93-8625
- Rules of Appellate Civil Procedure, Title 93, Chapter 3001
- Rules of Civil Procedure, Title 93, Chapter 2701
- Sovereign immunity abrogated, 1972 Const., II, 18
- Speedy remedy for every injury of person, property or character, 1972 Const., II, 16
- Supreme court power to prescribe rules, 1972 Const., VII, 2; 93-2801-1
 - administrative practice rules unaffected, 93-2801-5
 - advisory committee, appointment, 93-2801-2
 - continuation of existing rules until modified, 93-2801-6
 - effective date of rule changes, 93-2801-7
 - legislative power reserved, 93-2801-8
 - petitions of professional associations concerning rules, 93-2801-3
 - proposed rules, distribution to bench and bar, 93-2801-3
 - scope of rules within power of court, 93-2801-1
 - substantive rights of litigants not to be affected, 93-2801-1
- Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against
- Uniform Probate Code, application of rules, 91A-1-304—See UNIFORM PROBATE CODE

CIVIL RIGHTS

- Constitutional provisions, 1972 Const., II
 - unenumerated rights not denied, impaired or disparaged, 1972 Const., II, 34
- County parks, discrimination in employment prohibited, 16-4806
- Criminal conviction, offender not deprived of civil or constitutional rights except as specified by sentencing judge, 95-2227

INDEX

References are to Title and Section numbers

CIVIL RIGHTS (Continued)

- Discrimination because of race, color, sex, culture, social origin or condition, or political or religious ideas prohibited, 1972 Const., II, 4, 64-301
 - Discriminatory practices because of race, religion, color, national origin, age, physical or mental handicap or sex declared unlawful, 64-306
 - aiding, abetting, inciting or compelling forbidden act as violation, 64-312
 - attorney general as legal counsel for commission, 64-311
 - combination of bases for discrimination not justification, 64-307
 - "commission" defined, 64-305
 - complaint alleging discriminatory practice filed with commission, contents and formal requirements, 64-308
 - aggrieved person filing complaint, 64-308 (1)
 - attorney for commission, 64-311
 - commission filing complaint, 64-308 (1)
 - conference, conciliation and persuasion as means of eliminating discriminatory practice, duties of commission, 64-308 (4)
 - dismissal of complaint upon finding of no discrimination, 64-309 (2)
 - finding of discrimination, power of commission, 64-309
 - hearing by commission, notice, procedure, 64-308 (5)
 - injunction available to enforce commission order, 64-310
 - investigation by commission, 64-308 (4)
 - legal counsel for commission, 64-311
 - notice to commission of filing of complaint, 64-308 (2)
 - temporary judicial relief pending determination of complaint, maximum duration, 64-308 (3)
 - credit transactions, discriminatory practices prohibited, 64-306 (7)
 - age or mental handicap as legitimate discrimination criteria, 64-307 (1)
 - definitions, 64-305
 - discharge of or discrimination against person because of filing complaint as violation, 64-312
 - educational institutions, discriminatory practices by, 64-306 (6)
 - employment, discriminatory practices in, 64-306 (1)
 - exemptions, petition for, finding required, 64-306.1
 - strict construction of basis for exemption, 64-306 (9), 64-306.1
 - financial institutions, discriminatory practices, 64-306 (4)
 - freedom from discrimination as civil right, 64-301
 - housing, discriminatory practices, 64-306 (3)
 - labor organization or labor-management committee, discriminatory practices, 64-306 (1) (b)
 - lavatory, bathing or dressing facilities, separation because of sex permissible, 64-307 (2)
 - opposition to forbidden practices, discrimination prohibited because of, 64-306 (8)
 - physically handicapped persons, employment discrimination against prohibited, limitations, 64-304
 - previous discriminatory practices, certain acts deemed lawful for correction of, 64-307
 - public accommodations, discriminatory practices, 64-306 (2)
 - records required of employers, labor organizations and employment agencies, 64-306.1
 - state and political subdivisions, discriminatory practices by, 64-306 (5)
 - violations, penalty, 64-312
 - Education, nondiscrimination in, 1972 Const., X, 7
 - Hospitals and facilities constructed with public funds, discrimination prohibited, 69-5313
 - Individual dignity, 1972 Const., II, 4
 - Newly created rights prospective and not retroactive, 1972 Const., Transition Schedule, Sec. 3
 - Pardon of criminal offender restoring civil rights, 95-2227
- ### **CLAIM AND DELIVERY**
- Seizure of property prohibited without order of court attached to affidavit, 93-4102
 - criteria for signing order by court, 93-4102 (2)

INDEX

References are to Title and Section numbers

CLAIMS

Assignment of claims against state, 83-901 to 83-904

Decedents' estates, claim of creditors, 91A-3-801 to 91A-3-816—See DECEDENTS' ESTATES, Creditors' claims

CLERK OF DISTRICT COURT

Arrest, clerk privileged from arrest, when, 95-616

Authorized actions by clerk, M. R. Civ. P. Rule 77(c)

Fees enumerated, 25-232

naturalization fees paid to county treasurer for credit to general fund of county, 25-210

probate proceedings, 25-233

Membership in clerks' association, payment from county funds, 16-3006

Practice of law by clerk, restrictions on, 93-902

Salary to conform to schedule, 25-609.1

Uniform Probate Code

bond of personal representative, duties, 91A-3-604, 91A-3-605
definition, 91A-1-201 (5)

informal probate or appointment proceedings, powers and duties, 91A-3-301 to 91A-3-311—See PROBATE AND ADMINISTRATION PROCEEDINGS

issuance of certified copies, fee, formal requirements, 91A-1-305

powers and duties, 91A-1-305, 91A-1-307

records to be kept by clerk, 91A-1-305

CLERK OF SUPREME COURT

Arrest, clerk privileged from arrest, when, 95-616

Fees chargeable by clerk, 82-503

Practice of law by clerk, restrictions on, 93-902

Salary, 25-501

CLOSE PURSUIT

Power of arrest by officers of another state, 95-619

COAL

Gross proceeds tax, 84-1320 to 84-1325—See TAXATION, Coal gross proceeds tax

Native coal preferred for public buildings, 82-1904.1

use of other fuels not prohibited, 82-1904.2

Pneumoconiosis as occupational disease, definitions, 92-1303, 92-1315.1—See OCCUPATIONAL DISEASE ACT, Pneumoconiosis

Severance tax, 84-1312 to 84-1319—See TAXATION, Coal severance tax imposed

CODE OF ETHICS

Legislative provision of code of ethics prohibiting conflicts of interest involving legislators and other public officials, 1972 Const., XIII, 4

CODES AND LAWS

Criminal Procedure, 95-101 et seq.—See CRIMINAL PROCEDURE

Form and procedure for passage of bills, 1972 Const., V, 11—See LEGISLATURE, Bills

"Man" and "men" deemed to include "woman" or "women," 12-217

Recodification of Revised Codes of Montana, 1947, 12-501 to 12-510

code commissioner office created within legal services division of legislative council, 12-502

duties of code commissioner, 12-505

qualifications of code commissioner, 12-503

copyright to be sole property of state, 12-508

definitions, 12-501

deposit of code with secretary of state, publication of notice, 12-509

effect of recodification, 12-506

name of recodification, 12-504

publication of recodification, sale, fixing of price, 12-507

proceeds remitted to state treasurer, purpose, 12-507 (3)

INDEX

References are to Title and Section numbers

CODES AND LAWS (Continued)

Recodification of Revised Codes of Montana (Continued)

sets of recodification to be purchased by state at cost, 12-507 (4)
supplements, replacements, updates, 12-510

Reference to section number presumed to refer to title, chapter or section of Revised Codes of Montana, 1947, 12-216

Replacement Volumes 1 and 9 to Revised Codes of Montana, 1947
adoption, 12-337

Replacement Volumes 1, part 2, and 2, parts 1 and 2 to Revised Codes of Montana, 1947

adoption, 12-345
omissions or inaccuracies, effect, 12-346

Replacement Volumes 3 and 4 to Revised Codes of Montana, 1947
adoption, 12-339

omissions or inaccuracies, effect, 12-340

Replacement Volumes 4, part 1, and 8 to Revised Codes of Montana, 1947
adoption, 12-347

omissions or inaccuracies effect, 12-348

Replacement Volume 5 to Revised Codes of Montana, 1947
adoption, 12-343

omissions or inaccuracies, effect, 12-344

Replacement Volumes 6 and 7 to Revised Codes of Montana, 1947
adoption, 12-341

omissions or inaccuracies, effect, 12-342

Second Replacement Volume 4, part 2 to Revised Codes of Montana, 1947
adoption, 12-349

omissions or inaccuracies, effect, 12-350

COERCION

Uniform Commercial Code supplemented by general principles of law, 87A-1-103

COLLECTIVE BARGAINING

Public employees, 59-1601 to 59-1616—See PUBLIC OFFICERS AND EMPLOYEES, Collective bargaining

COLLEGES AND UNIVERSITIES

See also SCHOOLS

Children's center residents, university aid to, 80-2107

Community colleges

annexation of territory to district, 75-8125

area requirements for district, 75-8104

borrowing power of college, 75-8122

budget adopted annually, 75-8127

sources of revenue, 75-8128

corporate powers of district, 75-8102

courses of instruction provided by district, 75-8119

definition of terms, 75-8101

degrees, restrictions on granting, 75-8126

depositories of district moneys, 75-8133

election on organization of district called by regents, 75-8106

ballot form, 75-8106

conduct of election, 75-8111

majority vote required to establish district, 75-8112

nomination of trustee candidates, 75-8108, 75-8109

notice of election, publication, 75-8110

sample ballot for trustee election, 75-8109

trustees elected at organization election, 75-8107

employment of personnel for college, 75-8120

federal and state aid, acceptance, 75-8130

financing of college, 75-8122

gifts and donations, acceptance, 75-8123

lease or sale of district property, 75-8124

name of district, 75-8102

petition for organization of district, 75-8105

examination of petition and call of election, 75-8106

INDEX

References are to Title and Section numbers

COLLEGES AND UNIVERSITIES (Continued)

- Community colleges (Continued)
 - population requirement for district, 75-8104
 - purpose of districts, 75-8101
 - regents, supervision of colleges by, 75-8103
 - retirement benefits for teachers, 75-8120
 - tax levy for college, 75-8122
 - additional levy proposition, 75-8131
 - adult education levy, 75-8129
 - county commissioners to fix levy, 75-8132
 - election of trustees, 75-8114
 - mandatory levy, 75-8128
 - tax valuation requirement for district, 75-8104
 - treasurer of county, moneys deposited with, 75-8133
 - trustees of district
 - election of trustees, 75-8114
 - canvass and tabulation of votes, 75-8115
 - first board of trustees, 75-8107
 - expenses of members of board, 75-8117
 - meetings of trustees, 75-8117
 - offices of trustees, 75-8113
 - organization meeting of trustees, 75-8113
 - notice of meeting, 75-8112
 - pecuniary interest in contracts prohibited, 75-8118
 - quorum of trustees, 75-8117
 - seal of board, 75-8117
 - vacancies in trustee positions, 75-8116
 - tuition and fees, 75-8119
- Degrees, control of award by board of regents, 75-8502
- Discriminatory practices in respect to admissions unlawful, 64-306 (6)—See CIVIL RIGHTS, Discriminatory practices
- Drug and alcohol abuse courses to be offered, 75-8902
 - consultation with and advice by dependency commission, 75-8905
 - purpose of requirement, 75-8901
 - required course for teachers, 75-8903
- Eastern Montana College
 - gifts and donations, acceptance, 75-8425
 - land grant to college, acceptance and administration, 75-8427
 - purpose of college, 75-8423
- Educational broadcasting, 75-9001 to 75-9004—See EDUCATIONAL RADIO AND TELEVISION
- Federal higher education programs, 75-9301 to 75-9303
 - commission on federal higher education programs created, purpose, 75-9301, 82A-512
 - allocated to board of regents for administrative purposes, 82A-512 (6)
 - compensation of members, 82A-112 (7), 82A-512 (7)
 - duties, 75-9303
 - existence and composition, 82A-512
 - duties of commission, 75-9303
 - purpose of law, 75-9301
- Institutional programs, use of university facilities and personnel in, 80-1405
- Juvenile facilities of department of institutions, university aid to, 80-2213
- Law enforcement academy
 - advisory board
 - abolition of board and transfer of functions, 82A-1202
 - composition, 75-5205
 - duties and powers, 75-5206
 - term of members, 75-5205
 - establishment, 75-5203
 - expenditure of funds for attendance of officers, lawful, 75-5208
 - officers in attendance at academy not to suffer loss of salary, vacation, seniority or other rights, 75-5207

INDEX

References are to Title and Section numbers

COLLEGES AND UNIVERSITIES (Continued)

Law enforcement academy (Continued)

- persons eligible for admission, 75-5204
- purpose of establishing, 75-5202
- short title, 75-5201

Mineral science and technology college

- assay and analysis fees, collection and deposit, 75-8608
- bureau of mines and geology, establishment as department, 75-8407
 - director and assistants of bureau, duties, 75-8409
 - functions of bureau, 75-8408
- purpose of college, 75-8407

Montana State University, establishment, 75-8410

- agricultural experiment station, 75-8411 to 75-8411.7—See AGRICULTURAL EXPERIMENT STATION
- building fees assessed against students, 75-8503.1
- purposes of university, 75-8410

Montana university system

- admission without payment of tuition or fees, 75-8611 to 75-8614—See tuition charges, below
- agricultural experiment station, 75-8411 to 75-8411.7—See AGRICULTURAL EXPERIMENT STATION
- board of regents, composition, 1972 Const., X, 9; 75-5610 (2)
 - commissioner of higher education, appointment by board, 1972 Const., X, 9
 - governor ex officio member of board, 1972 Const., X, 9
 - powers and duties, 1972 Const., X, 9; 75-5617 (2)
 - superintendent of public instruction ex officio member of board, 1972 Const., X, 9

- borrowing power of regents, 75-8504
 - state not obligated, 75-8505

- building construction, authority of regents and governor, 82-3316
 - construction to be supervised by controller, 82-3317

coeducational, 75-8401

- commissioner of higher education, 1972 Const., X, 9
- conservation education in teacher preparatory courses, 75-8803
- definition of terms, 75-8402
- degrees, control by board of regents, 75-8502
- domicile of students, rules for determining, 75-8703
 - definition of terms, 75-8702
 - intent, determination, 75-8704

Eastern Montana College, 75-8423 to 75-8427—See Eastern Montana College, above

eligibility for admission to units, 75-8701

endowed professorships, 75-8804

executive board for each unit, establishment and organization, 75-8510

meetings and powers of boards, 75-8511

expenditures controlled by regents, 75-8609

funds of system inviolate and guaranteed against loss or diversion, 1972 Const., X, 10

investment, 1972 Const., VIII, 13, X, 10

gifts and grants, acceptance, 75-8429

form of holding gift, 75-8610

Indians admitted without payment of fees, 75-8705

justices of the peace, orientation course in law school, 93-401

loyalty oath required of faculty members, 75-8805

military training, 75-8701

Federal assistance in training, 75-8802

mineral science and technology college, 75-8407 to 75-8409—See Mineral science and technology college, above

Montana State University, 75-8410 to 75-8411.7—See Montana State University, above

motor vehicle regulation at units of system, 75-8503.2

citations by agreement with city or county authorities, 75-8514

finances and penalties, assessment, 75-8503.3

unpaid parking assessments or fines as ground for refusing student registration, 75-8503.3 (g)

INDEX

References are to Title and Section numbers

COLLEGES AND UNIVERSITIES (Continued)

Montana university system (Continued)

- name of system, prohibition of unauthorized use, 75-8404
 - Northern Montana College, 75-8428—See Northern Montana College, below
 - presidents of units, powers and duties, 75-8512
 - security departments, control and direction, 75-8515
 - regents, state board of education as, 75-8501
 - powers and duties of regents in general, 75-8501
 - research and development programs, units engaging in, 75-8801
 - resident students granted priority, 75-8601
 - domicile of student, determination, 75-8703, 75-8704
 - revenue-producing facilities, regents' power to purchase, construct and operate, 75-8503
 - borrowing power of regents, 75-8504
 - state not obligated, 75-8505
 - construction to be supervised by controller, 82-3317
 - prior contracts and obligations not affected, 75-8508, 75-8509
 - state funds, restriction on use, 75-8507
 - units of financing, 75-8506
 - security departments for units, establishment and appointment of members, 75-8513
 - areas within which authority exercised, 75-8513
 - firearms, when carried by guards, 75-8516
 - president to direct security department, 75-8515
 - traffic citations by agreement with city or county, 75-8514
 - sex discrimination prohibited, 75-8401
 - students' right of privacy, 75-8706 to 75-8711
 - academic and disciplinary records to be kept separate, examination by student authorized, 75-8711
 - covert records of student, discrimination against student prohibited, 75-8706
 - entry into student room, written notice required, exceptions, 75-8708
 - intrusions by police or officials, standards and procedures for, 75-8706
 - legislative intent, 75-8706
 - release of student records restricted, 75-8710
 - search or entry to be in accordance with law, 75-8709
 - waiver of right prohibited, 75-8707
 - tuition charges and fees prescribed by regents, 75-8601
 - aged students, waiver of tuition, 75-8601 (c)
 - armed forces, servicemen generally, 75-8612
 - attendance of students, duties of board, 75-8614
 - children of armed forces member suffering service connected death, free fees and tuition, 75-8612
 - domicile, determination, 75-8703, 75-8704
 - eligibility for waiver determined by board of regents, 75-8613
 - Indians enrolled without fees, 75-8705
 - period of eligibility for waiver, 75-8612
 - spouse and children of Vietnam prisoner or serviceman missing in action, waiver of charges, 75-8612 (4)
 - veterans, free fees and tuition, exceptions, 75-8611
 - waiver of nonresident tuition, 75-8601
 - units constituting system, 75-8403
 - University of Montana, 75-8405, 75-8406—See University of Montana, below
 - Western Montana College, 75-8424 to 75-8427—See Western Montana College, below
- Northern Montana College, purposes and instruction given, 75-8428
- Privileged communications between counselor, psychologist, nurse, or teacher and student, 93-701-4
- Unemployment compensation coverage of employees, 87-110
- University of Montana
- courses given at university, 75-8406
 - departments of university, 75-8406
 - forestry school established, 75-8405
 - joint library services with city or county in which unit of University located, 44-213—See LIBRARIES, Joint library services

INDEX

References are to Title and Section numbers

COLLEGES AND UNIVERSITIES (Continued)

University of Montana (Continued)

- law school established, 75-8405
- perpetual appropriation of income for support of university, 75-8602
- purposes of university, 75-8405

Western Montana College

- gifts and grants to college, acceptance, 75-8426
- land grant to college, acceptance and administration, 75-8427
- purpose of college, 75-8424

Western regional higher education compact adopted, 75-4901

- effective date and notice of approval, 75-4902
- placement agreements negotiated by interstate commission, 75-4903
- compact rights and obligations not altered, 75-4905
- terms of agreements, 75-4904

Work-study program, 75-9101 to 75-9111—See WORK-STUDY PROGRAM

COLUMBIA INTERSTATE COMPACT

- Commissioners representing Montana, appointment and terms, 89-3202
- compensation and reimbursement of commissioners, 89-3204

Co-operation by state officers, 89-3205

Information furnished by state officers, 89-3205

Liberal construction of compact, 89-3206

Notice to president and other governors of ratification, 89-3207

Powers granted to commission, 89-3203

Ratification, 89-3201

Supplemental nature of powers, 89-3206

Text of compact, 89-3201

COMMERCIAL PAPER

Acceleration of performance, good faith required in exercising option, 87A-1-208

Acceptance of instrument

- banks' power to accept, 5-1001
- certification of check as acceptance, 87A-3-411
- date of acceptance of sight draft, 87A-3-410
- definition, 87A-3-410
- drawee's liability dependent on acceptance, 87A-3-409
- engagements of acceptor with respect to payment of instrument, 87A-3-413
- finality of acceptance, 87A-3-418
- form of acceptance, 87A-3-410
- time allowed for acceptance following presentment, 87A-3-506
- variation of draft in acceptance, rights of holder, 87A-3-412

Accommodation party, rights and liabilities, 87A-3-415

Accrual of causes of action on commercial paper, 87A-3-122

Agent, effect of instrument payable to, 87A-3-117

Alteration of instrument

- discharge of parties by alteration, 87A-3-407
- material alteration defined, 87A-3-407
- negligence contributing to alteration, unavailability of defense, 87A-3-406
- unauthorized completion treated as material alteration, 87A-3-115

Alternative payees, effect of instruments, 87A-3-116

Ambiguous terms in instrument, construction, 87A-3-118

Assignment of funds not made by check or draft, 87A-3-409

Bank collections and deposits, extent to which subject to chapter, 87A-4-102

Bank, effect of instrument payable at, 87A-3-121

Bank, effect of instrument payable through, 87A-3-120

Banks' power to accept drafts, 5-1001

Bearer instruments defined, 87A-3-111

Burden of proof as to signature, defenses and due course, 87A-3-307

Certification of check, effect, 87A-3-411

Citation of Uniform Commercial Code chapter, 87A-3-101

Consideration, want or failure as defense, 87A-3-408

Conversion of instrument by refusal to pay, accept or return, 87A-3-419

Course of dealing between parties, application, 87A-1-205

INDEX

References are to Title and Section numbers

COMMERCIAL PAPER (Continued)

- Dates on instrument presumed correct, 87A-3-114
- Definition of terms, 87A-3-102
 - "bill of exchange," 87A-3-104
 - "certificate of deposit," 87A-3-104
 - "check," 87A-3-104
 - "draft," 87A-3-104
 - general definitions in Uniform Commercial Code, 87A-1-201
 - index of definitions, 87A-3-102
 - negotiable instrument, 87A-3-104
 - "note," 87A-3-104
- Demand instruments, instruments included, 87A-3-108
- Description of payee in instrument, effect, 87A-3-117
- Destroyed instrument, action on, 87A-3-804
- Discharge of instrument
 - holder's right to discharge, 87A-3-301
 - sets of drafts, discharge by payment of any part, 87A-3-801
- Discharge of parties, 87A-3-601
 - acceptance varying terms of draft, discharge by holder assenting to, 87A-3-412
 - agreement with another party effecting discharge, 87A-3-601
 - alteration of instrument discharging parties, 87A-3-407
 - cancellation of endorsement as discharge, 87A-3-605
 - delay in presentment, notice of dishonor or protest discharging parties, 87A-3-502
 - impairment of collateral effecting discharge, 87A-3-606
 - impairment of recourse effecting discharge, 87A-3-606
 - mutilation of signature effecting discharge, 87A-3-605
 - notice of discharge required against holder in due course, 87A-3-602
 - payment to holder effecting discharge, 87A-3-603
 - reacquisition by prior party discharging, 87A-3-601
 - readiness to pay as tender effecting discharge, 87A-3-604
 - release of party as discharge of intervening party, 87A-3-606
 - renunciation of rights by holder effecting discharge, 87A-3-605
 - satisfaction to holder effecting discharge, 87A-3-603
 - surrender of instrument effecting discharge, 87A-3-605
 - suspension of enforcement rights effecting discharge, 87A-3-606
 - tender of payment, extent of discharge by, 87A-3-604
 - underlying obligation discharged by discharge of instrument, 87A-3-802
- Dishonor of instrument
 - action permitted on instrument or underlying obligation, 87A-3-802
 - acts constituting dishonor, 87A-3-507
 - bank making presentment by notice, dishonor following, 87A-4-210
 - evidence of dishonor, 87A-3-510
 - notice of dishonor required to charge parties on instrument, 87A-3-501
 - delay in notice, effect on liabilities of parties, 87A-3-502
 - evidence of notice, 87A-3-510
 - excuses for delay or failure to give notice, 87A-3-511
 - manner of giving notice, 87A-3-508
 - parties benefiting from notice, 87A-3-508
 - persons to whom notice given, 87A-3-508
 - time allowed for notice, 87A-3-508
 - waiver of notice, 87A-3-511
 - protest of dishonor
 - contents of protest, 87A-3-509
 - delay in protest, effect on liabilities of parties, 87A-3-502
 - excuses for delay or failure to make protest, 87A-3-511
 - notice of protest, construction, 93-401-22
 - permitted on dishonor of any instrument, 87A-3-501
 - required to charge parties on certain instruments, 87A-3-501
 - time allowed for protest, 87A-3-509
 - waiver of protest, 87A-3-511
 - rights of holder on dishonor, 87A-3-507
 - wrongful dishonor, bank liable for damages to customer, 87A-4-402
- Drawer's engagements with respect to payment of instrument, 87A-3-413

INDEX

References are to Title and Section numbers

COMMERCIAL PAPER (Continued)

Endorsement of instrument

- ambiguous signature construed as endorsement, 87A-3-402
- blank endorsement, effect, 87A-3-204
- cancellation of endorsement by prior party reacquiring instrument, 87A-3-208
- depository bank supplying endorsement on behalf of customer, 87A-4-205
- engagements of endorser enumerated, 87A-3-414
- forged signature, when effective, 87A-3-405
- name of payee misspelled or wrong, form of endorsement required, 87A-3-203
- negotiation, endorsement required for, 87A-3-202
- order of liability of endorers, 87A-3-414
- paper on which endorsement written, 87A-3-202
- partial assignment, endorsement operating as, 87A-3-202
- "pay any bank" endorsement, effect, 87A-4-201
- restrictive endorsement
 - effect of restrictions, 87A-3-206
 - intermediary bank not bound by restrictions, 87A-4-205
 - payor bank not bound by restrictions, 87A-4-205
 - terms creating restriction, 87A-3-205
- special endorsement, effect, 87A-3-204
- transferee's right to require endorsement, 87A-3-201

Exemptions from execution, waiver in unsecured note not enforceable, 93-5813.1

Extension terms in instrument, construction, 87A-3-118

Fiduciary, effect of instrument payable to, 87A-3-117

Foreign currency as medium of payment, 87A-3-107

Good faith required, 87A-1-203

Guarantor of payment, rights and liabilities, 87A-3-416

Holder of instrument

- bulk transaction preventing holding in due course, 87A-3-302
- burden of proof as to holding in due course, 87A-3-307
- claims available against holder, 87A-3-305
- consideration, want or failure as defense against holder, 87A-3-408
- defenses available against holder in due course, 87A-3-305
- defenses available against holder not in due course, 87A-3-306
- discharge ineffective without notice against holder in due course, 87A-3-602
- discharge of instrument, holder's right, 87A-3-301
- due course holder, requirements, 87A-3-302
- enforcement of payment, holder's right, 87A-3-301
- judicial sale preventing holding in due course, 87A-3-302
- knowledge preventing holding in due course, 87A-3-304
- legal process to obtain instrument preventing holding in due course, 87A-3-302
- negotiation of instrument, holder's right, 87A-3-301
- nonnegotiable instrument not subject to holding in due course, 87A-3-805
- notice preventing holding in due course, 87A-3-304
- sets of drafts, taker of any part as holder in due course, 87A-3-801
- transfer, holder's power to, 87A-3-301
- value given by holder to support holding in due course, 87A-3-303
 - bank with security interest as holder in due course, 87A-4-209

Incomplete instrument unenforceable, 87A-3-115

Interest on obligation

- rate payable in absence of specific rate, 87A-3-118
- time of commencement of interest in absence of provision, 87A-3-122

International sight draft, action permitted drawee bank, 87A-3-701

Investment Securities chapter governing where applicable, 87A-8-102

Joint liability of parties on ambiguous terms in instrument, 87A-3-118

Joint payees, effect of instrument, 87A-3-116

Knowledge of purchaser preventing holding in due course, 87A-3-304

Letter of advice of international sight draft, actions permitted drawee bank, 87A-3-701

Limitation of actions, time of accrual of action, 87A-3-122

Litigation on instrument, notice to third party liable, 87A-3-803

Lost instrument, action on, 87A-3-804

Maker's engagements with respect to payment of instrument, 87A-3-413

Negligence contributing to alteration or unauthorized signature, unavailability of defense, 87A-3-406

INDEX

References are to Title and Section numbers

COMMERCIAL PAPER (Continued)

Negotiability, requirements for, 87A-3-104

- bearer instruments, 87A-3-111
- collateral statements not affecting negotiability, 87A-3-112
- date on instrument, effect on negotiability, 87A-3-114
- definite time of payment, terms consistent with, 87A-3-109
- money as medium of payment, 87A-3-107
- mortgage securing note, effect on negotiability, 93-6010
- order of designated person, instruments payable to, 87A-3-110
- seal not affecting negotiability, 87A-3-113
- separate agreement, effect on negotiability, 87A-3-119
- sum certain, terms consistent with, 87A-3-106
- unconditional promise or order, permissible terms, 87A-3-105

Negotiation of instrument

- bearer instrument negotiated by delivery, 87A-3-202
- breach of duty in negotiation, effect, 87A-3-207
- corporation exceeding powers, effect of negotiation by, 87A-3-207
- duress, effect of negotiation obtained by, 87A-3-207
- endorsement, when required for negotiation, 87A-3-202
- fraud, effect of negotiation obtained by, 87A-3-207
- holder's right to negotiate, 87A-3-301
- illegal transaction, effect of negotiation in, 87A-3-207
- infant, effect of negotiation by, 87A-3-207
- mistake, effect of negotiation obtained by, 87A-3-207
- reacquisition by prior party, right to cancel intervening endorsements, 87A-3-208
- rescindable negotiation, effect, 87A-3-207
- warranties of negotiator, 87A-3-417
 - bank, items negotiated through, 87A-4-207

Nonnegotiable instruments, application of chapter to, 87A-3-104, 87A-3-805

Notice to purchaser preventing holding in due course, 87A-3-304

Payment of instrument

- finality of payment, 87A-3-418
- holder's right to enforce payment, 87A-3-301
- readiness to pay as tender of payment, 87A-3-604
- tender of payment, discharge effected by, 87A-3-604
- time allowed for payment following presentment, 87A-3-506

Presentment for payment or acceptance required to charge parties to instrument, 87A-3-501

- bank, instrument accepted or payable at, 87A-3-504
- bank making presentment by notice to party to accept or pay, 87A-4-210
- conversion by refusal to pay, accept or return instrument, 87A-3-419
- delay in presentment, effect on liabilities of parties, 87A-3-502
- excuses for delay for failure to make presentment, 87A-3-511
- exhibition of instrument required, 87A-3-505
- identification and evidence of authority of person making presentment required, 87A-3-505
- manner of making presentment, 87A-3-504
- person to whom presentment made, 87A-3-504
- place of making presentment, 87A-3-504, 87A-3-505
- receipt for payment required, 87A-3-505
- re-presentment after dishonor, terms permitting, 87A-3-507
- surrender required on full payment, 87A-3-505
- time allowed for presentment, 87A-3-503
- waiver of presentment, 87A-3-511
- warranties of person presenting, 87A-3-417
 - bank, items presented through, 87A-4-207

Protest of dishonor—See Dishonor of instrument, above

Reservation of rights by party while performing or accepting performance, 87A-1-207

Sale of goods, payment by check as conditional payment, 87A-2-511

Scope of Uniform Commercial Code chapter, 87A-3-103

Security interest in instrument, means of perfection, 87A-9-304

- possession taken by secured party, 87A-9-305
- transfer of security interest, rights vested, 87A-3-201

INDEX

References are to Title and Section numbers

COMMERCIAL PAPER (Continued)

Separate agreements affecting terms of instrument, 87A-3-119

Sets of drafts, rights and liabilities of parties on, 87A-3-801

Several liability of parties on ambiguous terms in instrument, 87A-3-118

Short title of Uniform Commercial Code chapter, 87A-3-101

Signature of instrument

agent's signature, 87A-3-403

ambiguous signature, endorsement presumed, 87A-3-402

assumed name as signature, 87A-3-401

burden of proof as to signature, 87A-3-307

forged signature, when effective, 87A-3-405

fraudulently procured issuance of instrument, signature to, 87A-3-405

mark in lieu of written signature, 87A-3-401

negligence contributing to unauthorized signature, unavailability of defense, 87A-3-406

pleadings as to signatures, 87A-3-307

representative's signature, 87A-3-403

required for liability on instrument, 87A-3-401

trade name as signature, 87A-3-401

unauthorized signature, effect, 87A-3-404

Statute of frauds applicable to sale of personal property other than goods and securities, 87A-1-206

Stolen instrument, action on, 87A-3-804

Subordination of chapter to other chapters of Uniform Commercial Code, 87A-3-103

Third party liable on instrument, notice of litigation, 87A-3-803

Threat or deception causing execution of pecuniary obligation document as deceptive practice, punishment, 94-6-307

Time allowed for required actions, 87A-1-204

Transfer of instrument

endorsement, transferee's right to enforce, 87A-3-201

holder's right to transfer, 87A-3-301

nonnegotiable instrument, application of chapter to, 87A-3-805

reacquisition by prior party, right to cancel intervening endorsements, 87A-3-208

rights vested by transfer, 87A-3-201

security interest transferred, rights vested in transferee, 87A-3-201

warranties of transferor, 87A-3-417

bank, items transferred through, 87A-4-207

Underlying obligation, discharge or suspension by taking of instrument in payment, 87A-3-802

Usage of trade, application, 87A-1-205

Waiver of statutory exemption in unsecured note not enforceable, 93-5813.1

COMMISSIONER DISTRICTS

See COUNTY COMMISSIONERS, Commissioner districts

COMMISSIONER OF HIGHER EDUCATION

Appointment, term, duties, compensation, facilities, 75-5611

Creation of office, 1972 Const., X, 9; 75-5609

Definition of office, 75-5609

Nonvoting participant at meetings of state board, 75-5615

Secretary of board of regents, 75-5612

COMMISSION FOR HUMAN RIGHTS

Allocated to department of labor and industry, 82A-1015

Designation as quasi-judicial board, 82A-1015 (3)

Existence and composition, 82A-1015

COMMISSION ON FEDERAL HIGHER EDUCATION PROGRAMS

Allocated to board of regents for administrative purposes, 82A-512 (6)

Definition, 75-9302

Duties of commission, 75-9303

INDEX

References are to Title and Section numbers

COMMISSION ON FEDERAL HIGHER EDUCATION PROGRAMS (Continued)

Existence and composition of commission, appointment, terms and compensation of members, 82A-512
Purpose of law, 75-9301

COMMISSION ON LOCAL GOVERNMENT

See LOCAL GOVERNMENT COMMISSIONS, Temporary commission

COMMUNICABLE DISEASES

Definition, 69-4102
Food service establishments, diseased person may not work in or handle food, 27-619
Jail prisoners, removal to hospital, 69-4516
Livestock, rules and regulations for control by department of livestock, 46-208
Quarantine by state department, penalty for violation, 69-4112
 local regulation, violation, 69-4517
Reports by physicians of cases treated, 69-4514
Smallpox vaccination required for school attendance, 69-4515
Tuberculosis control, 69-4301 to 69-4317—See TUBERCULOSIS
Venereal disease, 69-4601 to 69-4617—See VENEREAL DISEASE

COMMUNICATIONS

See also DEPARTMENT OF ADMINISTRATION, Communications

Criminal mischief causing interruption or impairment of public communications, punishment, 94-6-102

COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT

See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS, 82-3901 to 82-3906

COMMUNITY DEVELOPMENT

See PLANNING AND ECONOMIC DEVELOPMENT

Annexation of contiguous territory by municipalities, 11-514 to 11-525—See CITIES AND TOWNS, Annexation of contiguous areas

COMMUTATION OF SENTENCES

Governor's power to grant commutations, 1972 Const., VI, 12

COMPLAINT

Commencement of action by filing of complaint, M. R. Civ. P., Rule 3
Criminal cases, charging offense, 95-1501 to 95-1506—See CRIMINAL PROCEDURE, Complaint
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 2 to 14
Joinder of claims and remedies, M. R. Civ. P., Rule 18
Justices' courts, permissible pleadings, 93-6802.1
Service with summons, M. R. Civ. P., Rule 4D(2)

CONCEALED WEAPONS

Carrying concealed weapons not guaranteed right, 1972 Const., II, 12
Carrying in cities or towns prohibited, punishment, 94-8-210
Carrying outside city or town prohibited, punishment, 94-8-211
Definition of concealed weapon, 94-8-215
District court, original jurisdiction in actions for violation, 94-8-217
Exemptions from prohibition of carrying concealed weapons, 94-8-212
Permit to carry pistol or revolver, procedure and formal requirements for issuance, 94-8-214
 revocation of permit, authority of district judge, 94-8-214
Prisoner's possession of weapon prohibited, punishment, 94-8-213
"Unincorporated town" defined, 94-8-216

CONDITIONAL SALES

See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507

Definition of term, 19-103

INDEX

References are to Title and Section numbers

CONFESSIONS

Criminal cases, motions to produce or suppress confession or admission, 95-1804, 95-1805

CONFIDENCE GAMES

Prohibited, punishment, 94-8-406

CONFLICT OF LAWS

Foreign law, reasonable written notice of intention to raise issue concerning law of foreign country necessary, M. R. Civ. P., Rule 44.1

Marriage contracts, 48-304

Uniform Probate Code

administration in more than one state, application of assets to all claims, allowances and charges, 91A-3-815

ancillary administration of decedent estates, 91A-4-101 to 91A-4-401

choice of law as to meaning and effect of wills, 91A-2-602

domiciliary determination in proceeding first commenced in foreign state binding, 91A-3-202

execution of will, choice of law affecting validity of, 91A-2-506

formal testacy determination in foreign state, when binding, 91A-3-408

validity or construction of will determined in foreign state, effect, 91A-3-408

CONGRESS

Districts, commission for redistricting and reapportioning the state, 1972 Const., V, 14
accelerated effective date, 1972 Const., Transition Schedule, Sec. 1

Residence required for election or appointment to Congress, 23-4404

CONSERVANCY DISTRICTS

See WATER CONSERVANCY DISTRICTS

CONSERVATION

See ENVIRONMENTAL POLICY; MINES AND MINING; OIL AND GAS

Environment, provision for protection and improvement, 1972 Const., IX, 1

Reclamation of lands, 1972 Const., IX, 2

Renewable resource development, 89-3601 to 89-3609—See NATURAL RESOURCES

The Natural Streambed and Land Preservation Act of 1975, 26-1510 to 26-1523

appeal to district court, 26-1521

approval of supervisors required before work on project undertaken, 26-1514

arbitration panel appointed upon request of team member, 26-1514

composition of panel, payment of costs, 26-1515

modification of plan, assignment of costs, 26-1518

determination by supervisors, 26-1514

examination and investigation by supervisors, procedure, 26-1514

notice to supervisors required, contents, 26-1513

on-site inspection requested by department, procedure, 26-1514

"department" defined, 26-1512 (7)

"project" defined, 26-1512 (5)

"supervisors" defined, 26-1512 (4)

team called upon request for on-site inspection, 26-1514

team recommendations, supervisors action on, 26-1514 (4), (5)

compliance with Flood Plain Management Act required, 26-1519

definition of terms, 26-1512

emergency projects, provisions not applicable to, procedure, 26-1517

guidelines and standards for projects and exclusions, rules to be adopted by supervisor, 26-1520 (2)

initiation of project without consent as misdemeanor, punishment, restoration of damaged stream, 26-1523

minimum standards and guidelines to be set by rule of board, 26-1520

policy of state, 26-1511

project engaged in without approval as public nuisance, 26-1522

short title, 26-1510

vested water rights preserved, 26-1516

violations of act as misdemeanor, punishment, 26-1523

Water rights, 1972 Const., IX, 3

INDEX

References are to Title and Section numbers

CONSERVATION DISTRICTS

See SOIL CONSERVATION DISTRICTS, permanent volume

Assessments and funds

- certification of assessment to county assessor, 76-211
- collection of tax, application of general law, 76-212
- depository of funds of district, 76-215
- division between counties of amount to be raised by assessment, 76-205
- entry of assessment on assessment roll, 76-211
- estimate by supervisors of amount to be raised by assessment, 76-204
- expenses covered by estimates, 76-206
- general law on levy and collection, application to assessments, 76-212
- investment of funds, 76-221, 76-222
- levy of assessment by county commissioners, 76-209
- liability of officers on official bonds, 76-212
- lien of assessments, 76-231
- maximum income from levy, 76-209
- maximum regular assessments, 76-208
- mistakes as to ownership, effect, 76-232
- notice of organization of district filed with county clerk, 76-201
 - copies of notice transmitted to county commissioner, 76-202
- payment of district moneys on order by supervisors, 76-217
- "principal county" defined, 76-213
- purpose of expenditures, 76-219
- rate of assessment, computation, 76-210
- receipt and crediting of district funds by treasurer of principal county, 76-216
- regular assessments defined, 76-207
- report by treasurer to supervisors, 76-218
- settlements and payment by county treasurers other than of principal county, 76-214

Board of adjustment, compensation and travel expense of members, 76-111

Bond issues authorized, 76-223

Borrowing power of districts, 76-220

Chairman of district, 76-107

Citation of act, 76-101

Corporate powers of district, 76-108

Creation of district, 76-105

- notice, filing, 76-201, 76-202

Department of natural resources and conservation to administer law, 82A-1501.1

copies of documents furnished department, 76-107 (5)

duties of department, 76-104

Employees of districts, 76-107

Federal revenue sharing funds, authority to apply for and receive, 76-108 (15)

Flood control measures, 76-108

Natural Streambed and Land Preservation Act, duties of supervisors, 26-1514—

See CONSERVATION

Powers of district, enumeration, 76-108

Project areas, establishment, 76-224

area included in project area, 76-228

descriptions and notices, 76-227

election on creation, 76-225

expenses and financing of areas, 76-229

federal authority unaffected, 76-230

hearing on petition for establishment, 76-225

improvements, duty of supervisors to maintain, 76-233

notice of creation, 76-225

protests against project area, 76-226

Travel expense of supervisors, 76-107 (4)

CONSERVATORS

See PROTECTIVE PROCEEDINGS

CONSIDERATION

Failure as affirmative defense, M. R. Civ. P., Rule 8(c)

INDEX

References are to Title and Section numbers

CONSTABLES

- Appointment by county commissioners, number limited, 16-2406
- Appointment for service of process in counties without qualified constable, 93-7709
- Compensation fixed annually by county commissioners, 25-312
- Fish and game laws, enforcement by constables, 26-114
- Gambling offenses, duties, penalties for neglect, 94-8-414, 94-8-416
- Mileage allowance, 25-312
- Purchasing judgment on justice court docket as misdemeanor, 16-3607

CONSTITUTION

- See also separate index to 1972 Constitution, Supplement to Vol. 1, Part 1
- Alteration or abolition of constitution as exclusive right of people, 1972 Const., II, 2
- Amendment, 1972 Const., XIV—See CONSTITUTIONAL AMENDMENTS
- Compact with United States not affected by new constitution, 1972 Const., I
- Conventions for amendment of constitution, 1972 Const., XIV, 1 to 7—See CONSTITUTIONAL CONVENTIONS
- Effective date of 1972 constitution, see note following Sec. 1 of Transition Schedule, Vol. 1, Part 1, Supp.
- Prospective operation of new procedural or substantive rights, 1972 Const., Transition Schedule, Sec. 3
- Transition schedule, 1972 Const.
 - accelerated effective date, V, 6 (sessions) and V, 14 (districting and apportionment), Sec. 1
 - delayed effective date of V, 1 to 3 (the legislature), Sec. 2
 - elective and appointive officers in office on effective date of constitution, terms of, Sec. 6
 - general transition, Sec. 6
 - judicial officers in office on effective date of constitution, terms of, Sec. 4
 - laws, ordinances, regulations and court rules, how affected, Sec. 6
 - legislators, terms of, Sec. 5
 - public and private bonds, debts and contracts, validity continued, Sec. 6
 - prospective operation of new procedural or substantive rights, Sec. 3
 - rights and duties of public bodies, how affected, Sec. 6
 - suits, actions and rights of action, validity continued, Sec. 6

CONSTITUTIONAL AMENDMENTS

- Attorney general's summary of proposed amendments for placement on ballot, 37-104.1
- Convention, amendment by, 1972 Const., XIV, 1 to 7—See CONSTITUTIONAL CONVENTIONS
- Initiative, amendment by, 1972 Const., XIV, 9
 - form for petition, 37-202
 - other initiative provisions not applicable, 1972 Const., III, 8
 - signers of petition, 1972 Const., XIV, 10
 - time for filing petitions, 37-203

CONSTITUTIONAL CONVENTIONS

- Call of convention upon majority vote by electors, 1972 Const., XIV, 4
- Delegates, number, qualifications, nomination, election, 1972 Const., XIV, 4
 - oath of delegates, 1972 Const., XIV, 6
 - vacancies, how filled, 1972 Const., XIV, 6
- Duties of convention, 1972 Const., XIV, 7
- Expenses of convention, 1972 Const., XIV, 5
- Initiative, convention petitioned by, 1972 Const., XIV, 2
 - form for petition, 37-201
 - other initiative provisions not applicable, 1972 Const., III, 8
 - signers of petition, 1972 Const., XIV, 10
 - time for filing petition, 37-203
- Meeting of convention, time fixed by legislature, 1972 Const., XIV, 5
- Periodic submission to voters of question of holding convention, 1972 Const., XIV, 3
- Referendum on question of calling unlimited convention, vote required in legislature, 1972 Const., XIV, 1
- Submission of revisions, alterations or amendments to voters, 1972 Const., XIV, 7

INDEX

References are to Title and Section numbers

CONSUMER COUNSEL

Consumer interests represented by consumer counsel before public service commission, 70-701 to 70-711—See PUBLIC UTILITIES, Consumer counsel

CONSUMER LOAN ACT

Advertising, limitations on, 47-219

Annual examination of licensee, 47-216

Annual report

contents, 47-218

date required, 47-218

Change of place of business, 47-206

Confessions of judgment prohibited, 47-213

"Consumer type loan business" defined, 47-202

Contents of annual report required of licensee, 47-218

Contract or statement of contents

copy to be furnished borrower, 47-212

required contents, 47-212

Contracts of loan violating act, effect, 47-204

Definitions, 47-202

Exemptions from act, 47-204

Fee for annual examination of licensee, 47-216

First installment payment, date for, 47-211

Injunctions, power, 47-227

Installment payments, time period for, 47-211

Instruments containing blanks prohibited, exception, 47-213

Insurance required of borrower, restrictions and limitations on, 47-214

Interest charged, maximum, 47-204

Investigations, 47-215

License

definition, 47-202

denial, 47-207

display in place of business, 47-206

fee, 47-206

fee for annual examination of licensee, 47-216

fee for renewal, 47-209

issuance, 47-207

liability of licensee not affected by surrender of license, 47-221

license year, 47-206

notifying applicant of denial of license, 47-207

operating without, penalty, 47-228

pre-existing lawful contracts not affected by surrender, revocation or expiration of license, 47-222

reinstatement, 47-224

renewal, 47-209

required, 47-206

supplementary license for loans in excess of \$1000, 47-205

surrender of license by licensee, 47-221

suspension or revocation

hearing, 47-223

notice, 47-223

reinstatement, when, 47-224

"Licensee" defined, 47-202

Maximum loans by licensee, 47-205

Penalties for violations of act, 47-228

Period of time licensee required to preserve records, 47-217

"Person" defined, 47-202

Place of business

change, effect on license, 47-206

conduct of other business in same office, 47-208

display of license, 47-206

license required for, 47-206

INDEX

References are to Title and Section numbers

CONSUMER LOAN ACT (Continued)

Rates and charges

- additional charge, default or extension agreement, 47-210
- excess charges, effect, 47-210
- loans exceeding \$1000, permissible charges on, 47-205
- maximum rate of charge, 47-210
- penalty for violation, 47-228
- permissible rates, 47-210
- recording fees, 47-210
- refunds, 47-210

Receipt, licensee required to give, 47-212

Receivers, appointment for licensees, 47-227

Records, access of commissioner to, 47-226

Records required of licensee, 47-217

Regulation and supervision by department, 47-203

- access to records, 47-226

- annual examination of licensee, 47-216

- cease and desist orders, 47-227

- "department" defined, 47-202 (4)

- investigative powers, 47-215

- powers and duties vested in department, 47-203

- rules adopted by department binding on licensees, enforcement, 47-203 (1), (2)

 - copies of rules mailed to each licensee, 47-203 (1)

Repayment of loan in full, duty of licensee upon, 47-212.

Rules and regulations, 47-203

Scope of act, 47-204

Secured transactions, application of chapter to, 87A-9-203

Short title, 47-201

Time period for repayment, limitations on, 47-211

Wage assignments, 47-220

CONSUMER PRODUCT SAFETY ACT

Definition of terms, 69-7102

Education programs to be developed by department and other agencies, 69-7112

Enforcement duties of department, 69-7106 to 69-7111

- appropriate proceedings to be taken by department and county attorney, 69-7108

- detainer and destruction of misbranded or banned hazardous substances, 69-7107

- injunctive relief, 69-7106

- inspection of carriers, access of inspecting officers, 69-7111

- powers of agents of department, 69-7110

- rules for enforcement, adoption by department authorized, 69-7109

"Hazardous substance" defined, 69-7102 (4)

Label requirements established by rule of department, 69-7103

- "label" defined, 69-7102 (12)

Prohibited acts, 69-7104

- violation as misdemeanor, penalty, 69-7105

 - receipt or delivery of hazardous substance in good faith not a violation, 69-7105 (2)

Publication of information by department, 69-7113

Rules of department finding and declaring substances to be hazardous authorized, 69-7103

Short title, 69-7101

CONSUMER PROTECTION

Consumer counsel to represent consumer interests before public service commission, Const., XIII, 2; 70-701 to 70-711—See PUBLIC UTILITIES, Consumer counsel

Consumer reporting agencies, 18-501 to 18-521—See CONSUMER REPORTING AGENCIES

Corporate practices, laws for protection and education of people, 1972 Const., XIII, 1

Door-to-door sales, cancellation right of buyer, time allowed, conditions, 85-501 to 85-506—See DOOR-TO-DOOR SALES

Post-secondary educational institutions, civil relief for persons suffering loss or damage from unlawful practice, 75-9215—See POST-SECONDARY EDUCATIONAL INSTITUTIONS

INDEX

References are to Title and Section numbers

CONSUMER PROTECTION (Continued)

Product safety, 69-7101 to 69-7113—See CONSUMER PRODUCT SAFETY ACT
Security deposits by residential tenants, double damage recovery by tenant for wrongful withholding by landlord, 42-306—See LANDLORD AND TENANT, Security deposits

Unfair trade practices, actions for damages by persons suffering loss, 85-408—See UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION, Private actions

CONSUMER REPORTING AGENCIES

Consumer reports

- circumstances under which agency permitted to furnish report, 18-504
- information contained in public records, duties of agency, 18-514
- information in report, inclusion in subsequent report prohibited without verification, 18-508
- investigative consumer report, procurement, preparation or distribution prohibited, exceptions, 18-506 (1)
 - disclosure to consumer, when required, contents, 18-506 (1), (2)
 - employment purposes, report used for, 18-506 (1) (b)
 - liability of violator, restrictions, 18-506 (3)
- obsolete information not to be contained in report, 18-505
- procedures to be maintained by agencies to assure compliance, 18-507

Credit rating as property right with full constitutional protection, 18-503

Definition and construction of terms, 18-502

Disclosure of information contained in agency files, 18-509 to 18-514

accuracy of information disputed by consumer, duties of agency, 18-512

consumer, disclosure to, conditions, 18-510, 18-511

scope of disclosure, fee, 18-513

governmental agencies, limited disclosure to, 18-509

Purpose of law, 18-501

Refusal or increase in cost of credit or insurance, or refusal of employment, because of report information, duties of user of report, 18-515

Violations, remedies, 18-516 to 18-519

actions available to consumer, 18-516

jurisdiction and venue, 18-519

negligent noncompliance, civil liability for, 18-518

unfair trade practice, violation as, 18-521

willful noncompliance, civil liability for, 18-517

CONTAGIOUS DISEASES

See COMMUNICABLE DISEASES

CONTEMPT OF COURT

Bail-jumping as offense, contempt power of court unaffected, 94-7-308 (2)

Criminal contempt, elements of offense, punishment, 94-7-309

Habeas corpus, refusal to obey writ, 95-2706

Judgment or order, disobedience, M. R. Civ. P., Rule 70

Power to punish unaffected by Criminal Code, 94-1-104 (2)

Subpoena, failure to obey, M. R. Civ. P., Rule 45(f)

CONTINUITY OF GOVERNMENT

Post-attack continuity in government, 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government

CONTRACEPTIVES

Advertising, limitations upon, 94-8-110.2 (2)

Exemptions from law, 94-8-110.2 (1)

Illegally held subject to seizure, 94-8-110.2 (3)

Personal, collective or vending machine distribution prohibited, 94-8-110.2 (1)

Violation as misdemeanor, punishment, 94-8-110.2 (4)

CONTRACTORS

Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623

INDEX

References are to Title and Section numbers

CONTRACTORS (Continued)

Bond for payment of wages and benefits required of certain contractors, 41-2701 to 41-2705—See WAGES, Contractors bond

CONTRACTS

Actions against state, law not modified by Uniform Commercial Code, 87A-10-103

Assignment of contract rights, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS

Capacity to contract

education, minors' capacity to borrow for, 64-106.1

Uniform Commercial Code supplemented by general principles, 87A-1-103

Corporations, law imposing new liability prohibited, 1972 Const., XIII, 1

Impairing obligation of contracts, law prohibited, 1972 Const., II, 31

Statute of frauds, 13-606—See STATUTE OF FRAUDS

CONTRIBUTION

Distributees of decedent estate, payment of undischarged claim, 91A-3-1005

CONTRIBUTORY NEGLIGENCE

Affirmative defense, M. R. Civ. P., Rule 8(c)

CONVICTION

Licensure of criminal offenders, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS

CO-OPERATIVE ASSOCIATIONS

Amendment of articles, 14-204

Articles of incorporation, filing, 14-201

Certificate of incorporation, issuance, 14-204

Meetings of stockholders, 14-203

Merger or consolidation, plan, procedure, effective date, 14-216

limitation of actions to invalidate merger or consolidation, 14-216 (7)

rights and duties of new or surviving association, 14-216 (6)

Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A

Sale or disposition of assets, stockholder vote required, 14-216 (5)

limitation of actions to invalidate sale, 14-216 (7)

Unclaimed distributions, when presumed abandoned, 67-2205—See also PROPERTY, Unclaimed property

CO-OPERATIVE EXTENSION SERVICE

Duties, 75-8806

Entomologist's and apiarist's functions transferred to service, 82A-502

Fertilizer education and experimental programs, 3-1731

assessments allocated to support of program, 3-1730

CO-OPERATIVE MARKETING ASSOCIATIONS

Exemption from antitrust laws, 14-417.1

Fees for filing of articles and issuance of certificate, 14-422

CO-ORDINATE SYSTEM

Adoption of Coast and Geodetic Survey system, 67-2011

Documents, maps and reports, use of co-ordinates in, 67-2017

Interzonal tracts, description, 67-2014

Proximity to triangulation or traverse station required for recording of description, 67-2016

Public land surveys prevail over co-ordinate system, 67-2018

Purchasers and mortgagees not required to rely on co-ordinate system, 67-2019

Technical description of system and zones, 67-2015

Triangulation and traverse stations, incorporation into system, 67-2015

X- and y-co-ordinates, description and use, 67-2013

INDEX

References are to Title and Section numbers

CO-ORDINATE SYSTEM (Continued)

- Zones, division of state into, 67-2011
- designation of zonal systems, 67-2012
- technical description of zones, 67-2015

CORAM NOBIS

- Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing

CORONER

- See COUNTY CORONER, 95-801 to 95-814

CORPORATIONS

- Accountability of person for conduct in name of corporation, punishment as individual, 94-2-113
- Appropriation for private association or corporation prohibited, 1972 Const., V, 11
- Business Corporation Act, 15-2201 to 15-22-140—See BUSINESS CORPORATION ACT
- Charters granted, modified or dissolved in pursuance of general law, 1972 Const., XIII, 1
- Consumer protection laws to be provided, 1972 Const., XIII, 1
- Criminal procedure, offenses committed by corporations, issuance of summons, 95-615
- Development Credit Corporation Act, 15-2601 to 15-2618—See DEVELOPMENT CREDIT CORPORATION ACT
- Fees payable to secretary of state for filing and issuance of papers, 25-102
- Insurance holding companies act, 40-5501 to 40-5508—See INSURANCE, Holding companies
- License tax—See TAXATION, Corporation license tax
- credits for new or expanding corporations, 84-1519 to 84-1525
- Nonprofit corporations, 15-2301 to 15-2397—See NONPROFIT CORPORATION ACT
- Offenses subjecting corporation to prosecution, 94-2-112 (1)
 - “agent” defined, 94-2-112 (3)
 - due diligence to prevent commission of offense as defense, 94-2-112 (2)
 - “high managerial agent” defined, 94-2-112
- Professional corporations, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
- Religious Corporation Sole Act, 15-2401 to 15-2402—See RELIGIOUS CORPORATION SOLE ACT
- Retrospective law imposing new liability prohibited, 1972 Const., XIII, 1
- Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
- Securities registration, 15-2001 to 15-2025—See SECURITIES REGISTRATION
- Service of process on corporation, M. R. Civ. P., Rule 4D(2)
- Shareholders' derivative actions, allegations required, M. R. Civ. P., Rule 23(b)
- Special privileges, franchises or immunities prohibited, 1972 Const., II, 31
- Stock, issuance, transfer, and registration, 87A-8-101 to 87A-8-406—See INVESTMENT SECURITIES
- fiduciary transfers, 15-652 to 15-662—See INVESTMENT SECURITIES, Fiduciary transfers
- Unclaimed stock or distributions, when presumed abandoned, 67-2205—See also PROPERTY, Unclaimed property

COSMETICS

- See FOOD AND DRUGS, Food, Drug and Cosmetic Act, 27-701 to 27-723

COSMETOLOGY

Board of cosmetologists

- administrative services provided by department, 82A-1603
- allocation to department for administrative purposes, 82A-1602
- annual meeting of board, 66-805
- appointment, qualifications and terms of members, 82A-1602.8
- compensation of board members, 66-809

INDEX

References are to Title and Section numbers

COSMETOLOGY (Continued)

Board of cosmetologists (Continued)

- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.8
- expenses of members, reimbursement, 66-809
- legal assistance in hearings by board, 82A-1604
- moneys received by board, deposit and use, 66-809
- officers, election at annual meeting, 66-805
- retention of functions by board, 82A-1605

Criminal offenders, licensure of, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS

Definition of terms, 66-802

Electrologists, license required, 66-3601 to 66-3608—See ELECTROLOGY

Fees payable by licensees and applicants, 66-815

- deposit in earmarked revenue fund for use of board, 66-809

Injunctions, 66-817

Inspection fee, amount, payment required prior to issuance of license, 66-813.1

Licenses to teach, renewal requirements, 66-816

Price agreements, approval by board, hearing, procedure, 66-806

COSTS

Attorney fees, contractual right to recovery reciprocal, 93-8601.1

Judgment to provide for costs, M. R. Civ. P., Rule 54(d)

Offer of judgment before trial, effect on costs, M. R. Civ. P., Rule 68

Poor person may sue or defend without cost, 93-8625

Recommencement of previously dismissed action, M. R. Civ. P., Rule 41(d)

COUNTERCLAIM

Addition of parties, M. R. Civ. P., Rule 13(h)

Assignee bringing action, claims available against, 93-3403

Compulsory counterclaim, M. R. Civ. P., Rule 13(a)

Dismissal of counterclaim, M. R. Civ. P., Rule 41(c)

Exceeding opposing claim permitted, M. R. Civ. P., Rule 13(c)

Joinder of claims and remedies, M. R. Civ. P., Rule 18

Justices' courts, permissible pleadings, 93-6802.1

Omitted counterclaim, pleading by amendment, M. R. Civ. P., Rule 13(f)

Permissive counterclaims, M. R. Civ. P., Rule 13(b)

Separate trial and judgment permitted, M. R. Civ. P., Rule 13(i)

State and public agencies, right to counterclaim against not enlarged, M. R. Civ. P., Rule 13(d)

Supplemental pleading of claim arising or acquired after original pleading, M. R. Civ. P., Rule 13(e)

Third party brought in by plaintiff, M. R. Civ. P., Rule 14(b)

Trustee bringing action, claims available against, 93-3403

Uniform Probate Code

- claim of estate against creditor, 91A-3-811

- successor's interest reduced by indebtedness to estate, 91A-3-903

COUNTIES

Agricultural resources, appropriation of money for advertising through department of agriculture authorized, 16-1105

Airports, establishment, 1-801 to 1-803—See AERONAUTICS, City and county establishment of airports

Alternative forms of government authorized, 1972 Const., XI, 3; 16-5001—See also LOCAL GOVERNMENT CODE

- adoption of optional form by voters, 16-5004

- actions or proceedings performed or pending unaffected, 16-5006

- effective date, 16-5004

- elected officials to serve for remainder of terms, assignment of different duties authorized, 16-5004

- rules and regulations to remain in effect until amended or rescinded, 16-5006

- transfer of powers, 16-5006

INDEX

References are to Title and Section numbers

COUNTIES (Continued)

Alternative forms of government (Continued)

- county commissioner form of government, definition, appointment of officials, organization, 16-5015
 - authorization, 16-5002
- county commissioners to be elected under any optional form, 16-5007
 - administration of oaths authorized, 16-5011
 - chairman, election, 16-5011
 - election at large, change in number, terms of office, 16-5008
 - election at large or by district, 16-5007 (1)
 - election by districts, number, requirement, 16-5009
 - majority vote required for action, 16-5010
 - meetings and records to be public, 16-5010
 - number of commissioners, 16-5007 (2), 16-5008
 - officers and employees of county, compensation to be established, 16-5019
 - organization into board, 16-5011
 - powers of county vested in board of county commissioner, 16-5012
 - rules, 16-5010
 - specific powers and duties, 16-5013
- disapproval by voters, limitation upon new referendum, 16-5004
- discontinuance of optional form, election, procedure, 16-5005
- elected county executive form of government, 16-5017
 - absence or disability of executive, performance of duties during, 16-5018
 - authorization, 16-5002
 - compensation, 16-5019
 - election of county executive, 16-5017 (1)
 - powers and duties of county executive, 16-5017 (2), (3)
- elected county official form of government, definition, organization, modification, 16-5014
- initiation by county commissioners or upon petition of electors, 16-5003
- manager form of government, appointment, designation and duties of manager, 16-5016
 - absence or disability, performance of duties during, 16-5018
 - authorization, 16-5002
 - compensation, 16-5019
- specific forms of government included, 16-5002
- submission of question at regular or special election, 16-5003
 - adoption or disapproval by majority of votes, 16-5004
 - form of submission, 16-5003
 - majority vote required for adoption, 16-5004
 - notice of referendum to be published, 16-5003
 - resolution of county commissioners, 16-5003
 - two or more forms of government submitted. primary election required, 16-5003

Ambulance service

- establishment authorized, 69-3601
- joint service authorized, 69-3601
- methods of operation, 69-3602
- previously existing service unaffected, 69-3603

Armories, participation in building, 77-2006

Boarding homes for aged persons

- lease of county property for home, 16-1036
- operation of home by county, 16-1037
 - services provided at county-operated home, 16-1038

Bond issues

- amortization bonds, exchange, 16-2046
- board of investments as purchaser, delivery of bonds, payment, 16-2036
- city-county consolidated local government, limit on indebtedness, 16-2010.1
- earnings of sinking funds investments, disposition, 16-2001
- election required for issuance, 16-2021
 - canvass of election returns, 16-2028
 - petition for election, form and contents, 16-2022
 - registration of voters for election, 16-2026
- flood control costs, bonds issued to pay, 89-3312

INDEX

References are to Title and Section numbers

COUNTIES (Continued)

Bond issues (Continued)

- interest rate, maximum paid, 79-2602
- definition of terms, 79-2601

- investment of sinking funds, 16-2001, 16-2044

 - use of interest to complete project, 16-2041

- limitation of actions and defenses relating to issuance of bonds, 93-2612

- limitation on amount of bond issues, 16-2010

 - city-county consolidated local government, 16-2010.1

- payment for bonds to be made upon delivery, 16-2036

- purposes for which issues authorized, 16-2008

- redemption prior to maturity of bonds held by state, 79-1105

- repurchase of bonds from sinking fund moneys, 16-2044

- rescission of authority for issue, 16-2028

- resolution for issuance, 16-2028

- road and bridge bonds, 32-3801 to 32-3806—See HIGHWAYS, BRIDGES AND FERRIES, County bonds

- sale of bonds, 16-2032

 - notice of sale and documents sent to board of investments, 16-2031

 - notice to board of investments, waiver, 79-1102, 79-1103

- types of bonds permitted, 16-2012

Bonds of officers, 6-203 to 6-209—See BONDS AND UNDERTAKINGS

Boundaries of counties deemed those existing in 1972, 1972 Const., XI, 2

- change of boundary or county seat, 1972 Const., XI, 2

Budgets

- adoption of budget, 16-1904

- copies of preliminary budget, distribution, 16-1903

- department of community affairs, duties generally, 16-1901, 16-1909

 - accounting and costs systems to be established, 16-1909

 - copy of preliminary budget transmitted to department, 16-1903

 - estimate forms to be prescribed by department, 16-1901

 - final budget and tax levies forwarded to department, time for, 16-1904 (7)

 - forms to be prescribed, 16-1901, 16-1909

 - rules and classifications to be made by department, 16-1909

 - standard classification of expenditures to be established by department, 16-1902

- emergency expenditures, provision for, 16-1907

- tax levy, fixing, 16-1904

Capital improvement fund, establishment authorized, 16-1186

- investment of fund, crediting of interest, 16-1189

- maximum amount of fund, 16-1188

- purposes of fund, 16-1186

- sources of funds, 16-1187

Carrying concealed weapon prohibited, punishment, 94-8-211—See CONCEALED WEAPONS

- exemptions, 94-8-212

City and county consolidation—See CITY AND COUNTY CONSOLIDATION

City-county building, acquisition or construction authorized, 11-4201

- bonding authority undiminished, 11-4203

- contracts between city and county, 11-4202

Code of ethics for officers and employees, 1972 Const., XIII, 4

Commissioner districts, establishment, 16-902.1 to 16-902.5—See COUNTY COMMISSIONERS, Commissioner districts

Commission for management of civic centers, youth centers, museums, parks, hospitals, etc., 16-1008A

Consolidation of offices in one or more counties, 1972 Const., XI, 3; 16-2501 to 16-2507

- consolidation of offices without petition authorized, 16-2504

- deputies and personnel of consolidated office, 16-2507

- hearing required, notice, contents, 16-2502

 - conduct of hearing, 16-2503

 - joint hearings by commissioners of two or more counties, 16-2502.1

 - order of commissioner, 16-2503

INDEX

References are to Title and Section numbers

COUNTIES (Continued)

- Consolidation of offices in one or more counties (Continued)
 - initiation by county commissioners, resolutions of intent required, 16-2501.1
 - order of consolidation, publication, 16-2505
 - petition of taxpayers, contents, signatures required, 16-2501
 - examination of petition by county commissioners, 16-2502
 - salary and bond of officer holding consolidated office, 16-2507
- Continuity in government after enemy attack, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
- Contracts, proposals or bids to be accompanied by bid security, disposition upon acceptance or rejection of bid, 16-1607
- County buildings and improvements, erection and management, 16-1008A
- County high school bond funds in possession of county, investment, 16-2050 (2)
- County hospital, 16-1008A
 - joint hospitals authorized, 16-1040
 - definition of terms, 16-1039
 - terms of agreement, 16-1041
- County seats, change of, 1972 Const., XI, 2
- Curfews for minors, 16-1182 to 16-1184
- Debt limitations established by legislature, 1972 Const., VIII, 10
- Decision making process, public right of participation in, 1972 Const., II, 8
- Dedicated land for park or playground purposes, sale, lease or exchange prohibited, exceptions, 16-4808
- Deferred compensation plan for employees authorized, 68-2701 to 68-2709—See DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES
- Department of public safety in lieu of police departments and sheriff's office authorized in certain counties, 16-2726 to 16-2730
 - agreement between governing bodies of county and municipality required, 16-2726
 - commission to supervise department, composition, appointment and terms of members, 16-2726, 16-2726.1
 - compensation and expenses of members, 16-2726.2
 - existing commission, application of law to, 16-2726.4
 - meetings of commission, how called, 16-2726.3
 - organization meeting of commission, business conducted, 16-2726.3
 - qualifications of members, 16-2726.1 (4), (5)
 - successor members, appointment, 16-2726.2
 - vacancies, method of filling, 16-2726.2
 - employee discharged by director, hearing, procedure, 16-2728.1, 16-2728.2
 - reinstatement of employee prevailing on appeal to district court, 16-2728.3
 - officers, patrolmen and deputies, powers and duties, 16-2728
 - process returns, designation of director, 16-2730
 - officers, patrolmen and deputy sheriffs, designation as deputy sheriff, 16-2730
 - salaries of director and employees to be established by commission, minimum, 16-2729
 - sheriff as director of department, 16-2727
 - powers and duties, 16-2728
- Deposit of funds by treasurer, 16-2618
- Disaster emergency tax, city-county
 - board of commissioners meeting, 11-4303
 - definitions, 11-4301
 - determination of disaster, resolution of disaster committee, 11-4302
 - levy of tax to cover expenses, 11-4305
 - resolutions stating emergency, 11-4304
 - surplus held in separate fund, 11-4306
- Elderly persons, county tax levy for support of activities of, 71-1701
- Employees, hours of work of salaried personnel, 59-510(2)
- Establishment of local government units by law, 1972 Const., XI, 1
- Examination of accounts, 82-4516 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS
- Examination of accounts, reimbursement of costs, 82-1002
- Expenditures, strict accountability for, 1972 Const., VIII, 12
- Federal funds received under flood control act, use, 79-2101, 79-2102

INDEX

References are to Title and Section numbers

COUNTIES (Continued)

- Federal or state funds received, appropriation and expenditure by resolution of county commissioners authorized, 16-1185
- Flood control, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
- Four-day work week authorized for regular road and bridge department employees, 41-1121
- Gambling offenders, officer receiving money or thing of value for protection as felony, 94-8-417
- Garbage and ash collection districts, continuation authorized, 16-1031.1
 - creation, abolishment or change of districts authorized, 16-1031.2
 - service contracts, fee, special assessment authorized, 16-1031.2
- Group insurance for officers and employees, 11-1024
- Health, board of, 69-4501 to 69-4509—See HEALTH, LOCAL BOARDS OF
- Hospitals, 16-1042 to 16-1047
 - counties in which provisions applicable, 16-1047
 - reserve fund authorized for replacement and acquisition of property and equipment for hospitals and nursing homes, 16-1042
 - investment of funds, crediting of interest earned, 16-1044
 - sources of funds for maintenance of reserve fund, 16-1043
 - revenue bonds authorized for constructing hospital or nursing home, 16-1045
 - limit of annual principal and interest payment, 16-1045 (2)
 - refunding bonds authorized, 16-1045 (1)
 - sources of funds for service of bonds, 16-1045 (1)
 - tax levy, when authorized, 16-1045 (4), 16-1046
- Hospitals constructed by joint action of two or more counties, 69-5312
- Impact grants for large-scale coal development affecting county, 50-1801 to 50-1810
 - See MINES AND MINING, Large-scale coal development
- Improvement districts for road construction, 32-3101 to 32-3131—See HIGHWAYS, BRIDGES AND FERRIES, Local improvement districts
- Indebtedness of county, limit of amount, Const., VIII, 10; 16-807
 - single indebtedness or liability without approval of electors, exceptions, 16-807
- Indemnity insurance premiums, payment from county funds, 16-1001
- Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT
- Initiative and referendum, 1972 Const., XI, 8; 37-301 to 37-311
 - ballot form, 37-308
 - canvassing election vote, 37-308
 - co-operative measures required by people, 1972 Const., XI, 7
 - effective date of measure accepted by electors, 37-308
 - effective date of resolutions, 37-303
 - election at which initiative petition submitted, 37-302
 - filing of petition with county clerk, 37-301
 - forms of petitions and proceedings to conform to state law, exceptions, 37-311
 - judicial determination of validity of petition and ordinance, 37-301
 - measures required under other laws to be submitted to electors, 37-310
 - passage of resolution, submission to people not required, exception, 37-301
 - petition to initiate, amend or repeal county resolution, signatures required, 37-301
 - presentation of petition to board, 37-301
 - proclamation of result of election, 37-308
 - proclamation setting forth measure and date of election, issuance, publication, posting, 37-307
 - qualifications of electors, 37-309
 - re-enactment of resolution, initiative to procure, 37-301
 - referendum petition, time of filing, signatures, contents, 37-304
 - election at which referred measure submitted, 37-305, 37-306
 - repeal of resolution by electors, limitation upon re-enactment, 37-301
 - similar resolution enacted, judicial determination of material change, 37-301
 - special election ordered by commissioners, 37-306
 - submission of measure at general election, 37-306
 - submission of proposed resolution to people, when required, 37-301
- Insurance against tort liability, participation in state plan authorized, 82-4301 to 82-4327
 - See STATE OF MONTANA, Tort claims against governmental entities
- sovereign immunity abolished, 1972 Const., II, 18

INDEX

References are to Title and Section numbers

COUNTIES (Continued)

- Intergovernmental co-operation, 1972 Const., XI, 7; 11-4101 to 11-4110; 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
- Joint county youth guidance centers, 16-1008B
- Joint library services with unit of university of Montana located in county, 44-213—
See LIBRARIES, Joint library services
- Land owned by county, criteria for classification to be established by county commissioners, 84-4190.1
 - appraisal required before sale, exchange or lease, 84-4192.2
 - definition of terms, 84-4190.2
 - lands necessary to county business not included, 84-4192.2
 - powers and duties of board, 84-4192.1
 - purchaser of land subject to taxation, 84-4192
 - purpose of law, 84-4190.1
- Leases of county property, 16-1030
- Legislative enactment imposing duties on county to provide means of financing, 43-517
 - certain enactments excepted, 43-518
- Library federations authorized, 44-131 (9), 44-212 to 44-215—See LIBRARIES, Library federation
- License proceeds, disposition, 84-2708
- Limit of indebtedness, Const., VIII, 10; 16-807
 - limit of single purpose indebtedness or liability without approval of electors, exceptions, 16-807
- Livestock slaughtered for control of disease, partial payment of expense by county, 46-218—See LIVESTOCK, Slaughtering of diseased livestock
- Loan proceeds used only for purposes specified, 1972 Const., VIII, 11
- Local government study commissions to be established, 16-5101 to 16-5115—See LOCAL GOVERNMENT STUDY COMMISSIONS
- "Local government units" defined, 1972 Const., XI, 1
- Mineral reservations in conveyance of property, validation, 16-1122.1
- Mosquito control districts
 - annual reports of board, 16-4209
 - department of health and environmental sciences to advise county commissioners, 16-4209
- Motor vehicle license fund, sources, disposition and use, 53-122
- Nursing home for aged persons
 - joint institutions authorized, 16-1040
 - definition of terms, 16-1039
 - terms of contract between counties, 16-1041
 - lease of county property for home, 16-1036
 - operation of home by county, 16-1037
 - services provided at county-operated home, 16-1038
 - reserve fund for replacement and acquisition, 16-1042 to 16-1044—See Hospitals above
 - revenue bonds for construction, 16-1045 to 16-1047—See Hospitals, above
- Officers to keep offices at county seat, justices of the peace as exception, 16-2413
- Open meetings of public agencies
 - legislative intent, 82-3401
 - meetings to be open, exceptions, 82-3402
 - minutes to be available for public inspection, 82-3403
- Optional forms of government, 1972 Const., XI, 3; 16-5001 to 16-5019—See Alternative forms of government, above
- Photostatic or mechanical processes for records—See RECORDING
- Planning and zoning—See PLANNING AND ZONING
- Powers generally, 1972 Const., XI, 4
 - self-government powers, 1972 Const., XI, 6
- Printing and legal advertising, board of county printing to set maximum prices, 16-1226
 - "board" defined, 16-1226.1
 - competitive bids required, 16-1232
 - power of county commissioners to require competitive bidding not restricted, 16-1230

INDEX

References are to Title and Section numbers

COUNTIES (Continued)

Printing and legal advertising (Continued)

continuation of board in department of community affairs, change of name, 82A-904

"board" defined, 16-1226.1

compensation of members, 16-1228

county commissioners to contract for county printing, authorized methods and procedures for, 16-1230

bond required of contractor, 16-1231

competitive bids required, 16-1232

rate not to exceed amount set by board, 16-1230

subletting of contract, when required, 16-1231

county fairs and expositions exempt, 16-1233

powers and duties of board, 16-1226, 16-1229

purpose of law, 16-1226

rate not to exceed maximum set by board, 16-1230

Property exempt from taxation, 1972 Const., VIII, 5

Property, prior dispositions validated, 16-1510 to 16-1514

Property transactions with cities or towns, 16-1007.1, 16-1009.1

cities or towns authorized to transact, 11-964.1, 11-964.2

Public camping and recreational park, appropriations for, 62-102

Public defender's office, authority to establish, 95-1006

Public hospital districts

additional tax levy authorized to provide revenues certified as necessary and proper, 16-4309, 16-4309.1 (1)

general election laws applicable, 16-4309.2

notice of election, contents, 16-4309.2

submission to voters required, form of ballot, votes necessary, 16-4309.1 (2) to (4)

funds, receipt and disbursement, 16-4310

"hospital facilities" defined, 16-4301.1

Purchases and contracts

advertising for bids, when required, 16-1803

department serving as purchasing agent by mutual consent, 16-1803 (5)

division of contracts to circumvent bidding procedures prohibited, 16-1803.1

preference to Montana bidders, 82-1924

federal aid projects exempt, 82-1926

provisions in contract for preference to Montana materials and labor, 82-1926

residence, definition, determination of, 82-1925, 82-1925.1

solicitation of bids without advertising, when permitted, 16-1803 (4)

Records, destruction when old and worthless, 59-514

fiscal records, destruction after period of years, 59-516

Review of structure of government, when required, 1972 Const., XI, 9

Road and bridge departments regularly maintained, four-day work week authorized, 41-1121

Road fund, allotment from state land equalization payments, 81-1120

Road fund, use for flood control projects, 89-3308

Royalty reservations in conveyance of property, validation, 16-1122.1

Rural improvement districts

assessments

interest on assessments, maximum rate, 79-2603

definition of terms, 79-2601

lighting systems, assessments for, 16-1629

bond issues, maximum interest paid, 79-2602

definition of terms, 79-2601

cancellation of record of extinguished liability account, 16-1638

districts including more than one county

areas includable in district, 16-1605.1

trustees to administer district

number of trustees, 16-1605.2

powers of trustee, 16-1605.4

terms of office of trustee, 16-1605.3

vacancies in office, 16-1605.3

INDEX

References are to Title and Section numbers

COUNTIES (Continued)

Rural improvement districts (Continued)

- ditch protection devices, 16-1601(1)
- form of warrants and bonds, 16-1620
- "improvements" defined, 16-1626
- lighting systems
 - apportionment of costs, 16-1629
 - maintenance, 16-1629
- purchase contracts entered by county commissioners, 16-1607
- purchase of property authorized, 16-1601(2)
- sale of bonds and warrants, 16-1620
- "work" defined, 16-1626

Salaries of county officers, 25-605

Savings and loan association and building and loan associations as depositories of county funds, 16-2618

- demand deposits placed only in banks, 16-2618 (4) (a)
- distribution of deposits among authorized depositories, criteria for, 16-2618 (4) (b)

Self-government charters, establishment authorized, procedure, 1972 Const., XI, 5

powers of unit adopting self-government charter, 1972 Const., XI, 6

Service of process on counties, M. R. Civ. P., Rule 4D(2)

Sovereign immunity abolished, 1972 Const., II, 18

insurance plan, 82-4301 to 82-4327—See STATE OF MONTANA, Tort claims

Special improvement districts authorized, 1972 Const., VIII, 5

State aid for highway or other transportation purposes, allocation of funds, 11-4513

State land equalization payments, 81-1115 to 81-1121—See STATE LANDS, Equalization payments to counties

Subdividing and platting of land, 11-3859 to 11-3872—See PLANNING AND ZONING, Subdividing and platting of land

Surplus funds of county or school district, investment, 16-2050

Taxation

- appeal procedures for taxpayer grievances, 1972 Const., VIII, 7
- elderly persons, levy to support activities of, 71-1701
- flood control indebtedness, levy to pay, 89-3312
- levy for county purposes, 16-1015
- property exempt from taxation, 1972 Const., VIII, 5
- strict accountability for revenue received, 1972 Const., VIII, 12

Temporary commission on local government established, 16-5116 to 16-5121

Urban transportation districts, 11-4501 to 11-4513

- bond issues authorized, limit of principal amount, 11-4510
- budget submitted by board to county commissioners annually, 11-4508
- definition of terms, 11-4502
- dissolution of district, petition of voters, hearing, notice, procedure, 11-4512
- enlargement of district, vote required, procedure, 11-4511
- hearing on creation of district, notice, 11-4503, 11-4504
- initiative petition by electors, number of signers required, delivery to county clerk, 11-4503
- purpose of law, 11-4501
- resolution of county commissioners calling election, 11-4505
 - ballots, form and contents, 11-4505 (3)
- tax levy on district property by county commissioners, maximum rate, 11-4508
 - use of funds, duties of county treasurer, 11-4509
- transportation board selected, composition, terms of members, 11-4506
 - district governed by board, 11-4506
 - powers of board, 11-4507
 - subsequent election of members, 11-4506

Water conservation, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION

Weed control districts, creation of, 16-1709.1

- county and municipal land and public ways, control on, 16-1719
- county weed board, composition, term, compensation, duties, 16-1713, 16-1719
 - control of weeds and extermination of seed, duties of supervisors, payment of costs, 16-1719

INDEX

References are to Title and Section numbers

COUNTIES (Continued)

- Weed control embargo, proclamation by governor, 16-1708
 - finances and inspection fees, disposition, 16-1708.3
 - rules and regulations for enforcement prescribed by department, 16-1708.1
 - violations of embargo, penalty, 16-1708.2
- Zoning districts, 16-4701 to 16-4710—See PLANNING AND ZONING, County zoning districts

COUNTY ASSESSOR

- Salary, conformity to schedule required, 25-609.1
- Schools and meetings of county assessors and appraisers conducted by state, 84-708
- State land equalization payments to counties, duties, 81-1115 to 81-1121

COUNTY ATTORNEY

- Bingo and raffles, enforcement duties, 62-711—See GAMBLING, Bingo and raffles
- Coroner's inquest, duties, 95-803
- Fire districts, representation, 16-3101
- Gambling offenses, duty to prosecute, punishment for violation, forfeiture of office, 94-8-414, 94-8-416
- Health laws, enforcement by attorney, 69-4111
- Labeling of paint and paint products, violations, duties, 3-1515
- Medical practitioner unlawfully dealing in drugs, proceedings against, 27-905
- Practice of law prohibited in certain counties, 16-3106
 - deputy county attorneys, when private practice prohibited, 16-3108
- Public service commission supervision of railroads, county attorney to assist, 72-124
- Qualifications of county attorney in counties of more than 30,000, 16-3107
- Salary, 25-605
 - conformity to schedule required, 25-609.1
- School officials, legal assistance to, 75-8305
 - conflict of interest, employment of other attorney, 75-8305.1
- Securities act, enforcement duties, 15-2021
- Sports pools, enforcement duties, 62-732—See GAMBLING, Sports pools
- Third class cities, providing legal services for, agreement between governing bodies, 11-702
- Training co-ordinator for county attorneys created, 82-421
 - appointment, 82-422
 - functions, 82-423

COUNTY AUDITOR

- Counties in which office exists, 16-3201
- Oath of office, 16-3204

COUNTY CLERKS

- Annual report, contents, 16-2924
- Associations and organizations of clerks
 - memberships, payment for, 16-2926
 - travel expense to attend meetings, 25-508
- Examination of accounts, 82-4516 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS
- Failure to transmit quarterly report to department, civil penalty, 82-4511
- Fees, enumeration, 25-231
- Indexes to be maintained by clerks, 16-2905
- Married persons' individual property, recording of instruments describing or relating to, 16-2902 (6)
- Practice of law by clerk, restrictions on, 93-902
- Recording without charge certificates of discharged soldiers, 16-2927
- Salaries, conformity to schedule required, 25-609.1
- Seed lien records, filing and retention, 16-2922
 - destruction of records, when allowed, 16-2923
- Threshers' lien records, filing and retention, 16-2922
 - destruction of records, when allowed, 16-2923

INDEX

References are to Title and Section numbers

COUNTY COMMISSIONERS

- Agricultural resources, appropriation of money for advertising and exhibitions authorized, 16-1105
- Cancellation of record of extinguished liability accounts, 16-1638
- Commissioner districts to be established following each federal decennial census, 16-902.1
 - apportionment equalizing population and area authorized periodically, term of office of commissioner unaffected, 16-902.1
 - boundary change within six months preceding general election prohibited, 16-902.1
 - candidate filing prior to effective date of act, refund of filing fee, 16-902.4
 - certificate designating metes and bounds of districts, filing, formal requirements, 16-902.2
 - counties adopting optional or alternative form of government, law not applicable to, 16-902.5
 - county-wide election of commissioners, 16-902.3
 - equality in area and population, 16-902.1
 - review by district judge, 16-902.1
 - selection of commissioners from districts, 16-902.3
- Dog licensing, 16-4601 to 16-4615—See DOGS
- Erection and management of county buildings, 16-1008A
- Examination of accounts, 82-4516 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS
- Extra sessions, 16-910
- Federal and state funds received, appropriation and expenditure by resolution authorized, 16-1185
- Fire protection in unincorporated areas
 - fire districts
 - annexation, 11-2008
 - contracts with cities, towns and private companies for service, 11-2008
 - creation, 11-2008
 - dissolution, 11-2008
 - division, 11-2008
 - tax levy for, 11-2008
 - trustees, 11-2010
 - fire insurance premium tax deposited into volunteer fireman's compensation fund, amount, 11-2030
- Indemnity insurance premiums, payment from county funds, 16-1001
- Insect pest destruction directed by department of agriculture, 16-1149
- Leases of county property, 16-1030
- Meetings, 16-910
- Natural Streambed and Land Preservation Act, responsibilities of commissioners, 26-1512, 26-1514
- Optional forms of government, 1972 Const., XI, 3
- Parks, donation of land to state, municipality or federal government for park, 16-1131
- Personnel, employment by board authorized, 16-913
- Post-enemy-attack continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
- Rodents, co-operation and contracts with department of livestock and federal agencies, 16-1175
- Salary and mileage allowance, 16-912
- Sale of property, procedure, 16-1009
 - deferred payment sales, requirements for, 16-1009 (1), (4)
 - private sale, when authorized, 16-1009
 - school districts, procedure for sales to, 16-1009 (2)
- Tax levy for construction, maintenance and repair of public ferries, 32-1518
- Tax levy for county purposes, 16-1015

COUNTY CORONER

- Autopsies, when authorized, 95-802
 - liability of mortuary or physician limited, 95-813
- Death or stillbirth by other than natural causes, duty to make investigation, 95-801
- Deputy coroners, appointment authorized, 95-814

INDEX

References are to Title and Section numbers

COUNTY CORONER (Continued)

Inquests

- county attorney to request and give aid and assistance, 95-803
- death of person in penal institution or from peace officer using firearm, 95-803
- definition, 95-803
- jurors, number summoned, jurors to be sworn, 95-803, 95-804
- public proceedings required, 95-809
- recording and transcribing proceedings, payment of expenses, 95-808
- testimony of witnesses, writing required, filing, 95-508
- verdict of jury, writing required, contents, 95-807
- when coroner to hold inquest, 95-803
- witnesses, subpoena of, examination, 95-805
 - compelling attendance of witness, 95-806
 - writing and filing of testimony, 95-808

Jurisdiction of coroner, 95-812

Laboratory facilities, provision and payment for, 95-814

Notice to law enforcement agencies by coroner, when required, 95-801

Property found on body, disposition of, 95-810

Register required, contents, 95-811

Reports to coroner, when required, 95-801

Technical and clerical assistance, provision and payment for, 95-814

COUNTY SUPERINTENDENT OF SCHOOLS

Annual financial report, publication, 75-5807

Annual report to state superintendent, 75-5809

Appeals to county superintendent from school trustees, 75-5811

legal adviser, when appointment authorized, 75-5811

Appeals to state superintendent from county superintendent, 75-5709

Definition of term used throughout title, 75-5801

Election by voters of county, 75-5802

Employment and salary of deputies and assistants, 75-5804

Legal assistance by county attorney, 75-8305

Oath of office, 75-5803

time of taking oath, 75-8304

Oaths, administration to trustees, 75-5807

Office space and supplies provided by county commissioners, 75-5804

Powers and duties in general, 75-5805

ex officio duties with boards and committees, 75-5806

Preservation of records, reports and supplies, 75-5807

Qualifications for office, 75-5802

Salary, conformity to schedule required, 25-609.1

Sale of goods or services to school district as misdemeanor, penalty, 75-8303

State superintendent to advise and meet with county superintendents, 75-5706

Teachers, advice and direction to, 75-5808

Term of office, 75-5803

Traveling expenses paid from general fund, 75-5804

Trustees' meetings, holding, 75-5807

consultation with trustees, 75-5808

Vacancies in office, filling, 75-5803

Visitation of schools, 75-5808

COUNTY SURVEYOR

Plat books showing roads to be prepared by surveyor, 32-2803

COUNTY TREASURER

Convention travel expense and per diem allowance, 25-508 (6)

Count of cash monthly by county clerk and recorder, certificate of amount to department, 16-2625

County high school bond funds, investment, 16-2050 (2)

Deposits of public funds, 16-2618

trust receipts in lieu of actual securities as security for deposit, formal requirements, 16-2621

INDEX

References are to Title and Section numbers

COUNTY TREASURER (Continued)

- Examination of accounts, 82-4516 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS
- Examination of books and counting of money by department, 16-2625 (1)
- Investment of public funds in government securities, 16-2618
- Membership in and co-operation with associations and organizations of county treasurers authorized, 16-2627
- Salary, conformity to schedule required, 25-609.1

COUNTY WATER AND SEWER DISTRICTS

- Bonded indebtedness, vote required, 16-4522
- Combined elections authorized, 16-4535
- Consolidation of districts, petition and procedure, 16-4531
- Directors, election, term, qualifications, 16-4506
- Elections covered by general law, 16-4508
- Nominating petition, qualified signers, 16-4507
- Organization, persons qualified to vote, 16-4505
- Sewer service charges, payment of operating expenses, 16-4526
- System of rates and charges for proportional distribution of costs authorized, 16-4526
- Water and sewer rates, 16-4525

COURTS

- Administration of justice without sale, denial or delay, 1972 Const., II, 16
- Arrest, officers privileged from arrest, 95-616
- Contempt—See CONTEMPT OF COURT
- Criminal procedure, definition, 95-205
- Deaf persons, appointment of interpreter required, payment of fee, 93-514
- Judges' retirement system, 93-1107 to 93-1132—See JUDGES, Retirement system
- Judicial districts, 1972 Const., VII, 6
- Judicial standards commission, 1972 Const., VII, 11
- Jurisdiction of persons, M. R. Civ. P., Rules 4A, 4B
- Open to every person, 1972 Const., II, 16
- Other courts provided by law, judicial power vested in, 1972 Const., VII, 1
- Separation of powers, 1972 Const., III, 1
- Small claims courts, 93-322 to 93-344—See SMALL CLAIMS COURTS
- Speedy remedy afforded for every injury of person, property, or character, 1972 Const., II, 16
- Uniform Probate Code, jurisdiction of court and scope of proceedings, 91A-1-301, 91A-1-302—See UNIFORM PROBATE CODE, Courts, jurisdiction and scope of proceedings.

CRANE OPERATORS

- Overhead trolley cranes used in construction, license required of operator, 69-1601.1

CREDIT

- Credit card offenses, 94-6-307—See CREDIT CARDS
- False or deceptive financial statement to procure loan or credit as deceptive practice, punishment, 94-6-307

CREDIT CARDS

- Unlawful use as deceptive practice, acts constituting offense, punishment, 94-6-307

CREDIT UNIONS

- Accounts excluded from chapter on secured transactions, 87A-9-104
- Accounts with members, 14-641 to 14-646
 - dormant accounts, disposition, 14-646
 - joint accounts with right of survivorship authorized, effect of payment to one joint tenant, 14-643
 - lien of credit union for past due indebtedness of member, 14-645
 - minors, accounts with, 14-642
 - thrift accounts authorized, 14-641
 - trust accounts, payment, effect of death of member, 14-644

INDEX

References are to Title and Section numbers

CREDIT UNIONS (Continued)

- Amendment of articles of incorporation, procedure, 14-605
- Board of directors elected at annual meeting of members, 14-622
 - compensation and expenses of directors, 14-625
 - conflict of interest, director not to participate, 14-626
 - direction of business affairs, funds, and records as duty of board, 14-628
 - duties of directors, 14-631
 - first board of directors, election, 14-622
 - meetings of directors, 14-630
 - number of directors, terms, 14-622 (1)
 - officers, election, 14-627
 - record of names and addresses of board members filed with department, 14-623
 - vacancies filled by board until next annual meeting, 14-624
- Bylaws, preparation, adoption, execution, 14-603 (3) to 14-605
- Capital of credit union as payments by members on shares, 14-639—See Accounts with members, above
 - certificate not required to denote ownership, 14-639 (3)
 - dividends on shares, declaration and payment, 14-640
 - reduction in shares to cover losses, 14-647
 - share insurance required, time limitation, duties of director, 14-658
 - subscription and payment for, and transfer of shares, 14-639 (2)
- Central credit union, organization authorized, 14-668
 - authorized membership, 14-669
 - powers of central credit union, 14-671
 - term "central" required in name, 14-668
 - voting representative designated by each member credit union, 14-670
- Conversion of credit union from or to federal credit union, 14-667
- Credit committee appointed by board of directors, 14-622 (3)
 - adequacy of security for loan determination, 14-651
 - compensation and expenses of members, 14-625
 - conflicts of interest transactions, member not to participate in, 14-626
 - credit manager appointed in lieu of committee, 14-622 (3)
 - powers and duties, 14-635
 - general supervision of loans to members as duty of committee, 14-632
 - approval of loan by majority required, 14-633
- loan officers, appointment by committee, approval or disapproval of loans, review, 14-634
- meetings of committee, frequency, business transacted, 14-633
- record of names and addresses of members filed with department, 14-623
- vacancies filled by board of directors, 14-624
- Credit manager, adequacy of security for loan determination, 14-651
- Definition and purposes of credit unions, 14-602
- Director of department of business regulation to administer law, 14-609
 - powers and duties of director, 14-609, 14-676
- Dissolution of credit union following liquidation, 14-665
- Examination of credit unions conducted annually by department, duties of credit unions, 14-611 (1)
 - audit report, when accepted in lieu of annual examination, 14-611 (3)
 - meeting of directors and committeemen to consider matters in reports, 14-611 (2)
 - report of examination forwarded to executive officer of credit union, contents, 14-611 (2)
- Executive committee, appointment authorized, purpose, 14-629
- Federal credit union, conversion to state charter, 14-667
- Fiscal year, 14-608
- Immunity from taxation, 14-672 to 14-674
 - participation in government programs not waiver of tax exemption, 14-674
 - state and local taxes, 14-672
 - stock transfer taxes, 14-673
- Incorporation of credit union, procedure, 14-603
 - agreement of subscribers to serve as directors and on supervisory committee submitted to director, 14-603 (4)

INDEX

References are to Title and Section numbers

CREDIT UNIONS (Continued)

- Incorporation of credit union (Continued)
 - articles of incorporation, execution by members, contents, formal requirements, filing, 14-603
 - amendment of articles, procedure, 14-605
 - form of articles for guidance available from director, 14-604
 - bylaws prepared, adopted, and executed by subscribers, 14-603 (3)
 - amendment of bylaws, procedure, 14-605
 - form for guidance supplied by director, 14-604
 - forwarding of bylaws, together with articles, to director, 14-603 (5)
 - certificate of incorporation issued upon approval and filing of articles, 14-603 (5)
 - transaction of business prohibited until formal approval, 14-603 (6)
 - name, including words "credit union," to be stated in articles, 14-603 (2) (a)
- Insurance authorized, 14-656 to 14-658
 - liability insurance for officers, 14-657
 - member insurance, 14-656
 - share insurance under federal act required, time limitation, duties of director, 14-658
- Investment of funds, 14-659
- Liquidation of credit union, 14-664, 14-665
 - certificate of dissolution issued following liquidation, 14-665
 - involuntary liquidation, when ordered by director, 14-664
 - distribution of assets, 14-665 (7)
 - voluntary liquidation, notice, procedure, distribution of assets, 14-665
- Loan officer, adequacy of security for loan determination, 14-651
- Loans to members, 14-648 to 14-655
 - application in writing required, contents, 14-649
 - authority of credit union to make loan, 14-648
 - conditional sales contracts, notes and similar instruments, purchase by credit union authorized, 14-654
 - guaranteed loan program, participation by credit union authorized, 14-654
 - installment loans authorized, 14-652
 - line of credit, issuance by credit union authorized, 14-653
 - loans to officials, when authorized, conditions, 14-655
 - maximum interest rate, 14-648
 - maximum loan authorized, 14-650
 - participation with other credit unions in loans authorized, 14-654
 - security for loan, adequacy, 14-651
- Losses of credit union, reduction in shares for proportionate distribution, 14-647
- Meetings of members, eligibility and procedure for voting, 14-621
 - special meeting called by supervisory committee, purpose, 14-638
- Membership in credit unions, 14-615 to 14-620
 - eligibility for membership, 14-615 (1)
 - groups having common bond or interest as members, 14-615 (2)
 - immunity from liability for debts of credit union, 14-620
 - limited income persons, 14-618
 - members leaving membership field, retention of membership, 14-619
 - other credit unions as members, 14-617
 - societies, associations, and corporations as members, limit on borrowing, 14-616
- Merger of credit unions, approval of director required, procedure, 14-666
- Name, including words "credit union," to be stated in articles of incorporation, 14-603 (2) (a)
 - unauthorized use of words "credit union" prohibited, punishment, 14-606
- Officers elected by board of directors, terms, duties, 14-627
- Organization, management, and credit extension, instruction in school authorized, 14-675
- Place of business to be stated in articles of incorporation, 14-603 (2) (a)
 - change of place of business, procedure, 14-607
 - contract for facilities or personnel authorized, 14-607 (2)
 - sharing office space with other credit unions authorized, 14-607 (2)
- Powers of credit unions, 14-613, 14-614
 - general powers, 14-613
 - incidental powers, 14-614
- Records required of credit union, destruction, 14-612
 - photostatic or photographic reproduction admissible as evidence, 14-612 (3)

INDEX

References are to Title and Section numbers

CREDIT UNIONS (Continued)

- Reports required of credit union, time of filing, penalty for late filing, 14-610
- Reserves required of credit union against outstanding loans and risk assets, 14-660
 - amounts set aside from gross income for accumulation of regular reserve, 14-660
 - minimum regular reserve, when replenishment required, 14-660
 - "risk assets" defined, 14-662
 - special reserves, when required, 14-663
 - use and purpose of regular reserve, 14-661
- Severability of provisions, 14-677
- Short title, 14-601
- State credit union, conversion to federal charter, 14-667
- Supervisory committee appointed by board of directors, 14-622 (2)
 - compensation and expenses of members, 14-625
 - conflict of interest prohibited, 14-626
 - duties of committee, 14-636
 - removal of member by board of directors, 14-637
 - report of names of committee members filed with department, 14-623
 - special meeting of members, when committee authorized to call, 14-638
 - suspension and removal of officials, authority of committee, 14-637
 - vacancies filled by board of directors, 14-624
- Suspension of operation upon order of director, maximum period, grounds, 14-664

CRIME OF VIOLENCE

- Machine gun, possession or use in perpetration of crime of violence, punishment, 94-8-202—See **FIREARMS**
- Offenses included in term, 94-8-201
- Presumption from possession or use of machine gun by person convicted, 94-8-204

CRIMINAL CODE

- Application of code prospective, 94-1-103
 - civil remedies not affected, 94-1-104 (1)
 - contempt, power of court to punish not affected, 94-1-104 (2)
 - description of conduct constituting offense required, 94-1-104 (2)
 - offenses and defenses defined outside of code, 94-1-103 (2)
 - offenses defined outside of code committed before effective date, 94-1-103 (3)
- Classification of offenses as felony or misdemeanor, purpose and basis for, 94-1-105 (1)
 - offenses defined outside code, 94-1-105 (2)
- Construction according to fair import of terms, common-law rules inapplicable, 94-1-102 (2)
- Definition of terms, 94-2-101
- Offenses—See **CRIMINAL OFFENSES**
- Purposes generally, 94-1-102
- Short title, 94-1-101
- Time limitations on prosecutions, 94-1-106, 94-1-107—See **LIMITATION OF ACTIONS**

CRIMINAL INVESTIGATION DIVISION

- Abolition of investigator's position and transfer of functions, 82A-1202
- Appointment and qualifications of agents, 82-414
- Creation of division within office of attorney general, 82-414
- Definition of "agent," 82-415
- Files of division, restricted access to, 82-417
- Location of office, 82-420
- Powers and duties of agents, 82-416
- Retirement system, agents covered, 82-418
- State agencies to co-operate with division, 82-419

CRIMINAL MISCHIEF

- Acts constituting offense, 94-6-102
- Definitions, 94-2-101, 94-6-101
- Increased punishment for certain consequences of illegal acts, 94-6-102 (2)

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES

- Abandoned vehicles, removal or sale in unauthorized manner as misdemeanor, 53-909
- Abortion, 94-5-611 to 94-5-624—See ABORTION
- Absolute liability conduct, 94-2-104
- Accessories, 94-2-106 to 94-2-108—See Accountability for conduct of another, below
- Accountability for conduct of another, 94-2-106 to 94-2-108
 - "another" defined, 94-2-101 (2)
 - causing another to perform criminal act, 94-2-107 (1)
 - "conduct" defined, 94-2-101 (8)
 - corporation, person legally accountable for conduct, punishment as individual, 94-2-113
 - release from accountability, affirmative efforts required, 94-2-107 (3) (b)
 - requisite mental state required, 94-2-107 (1)
 - separate conviction of accountable person authorized, 94-2-108
 - solicitation, elements of offense, punishment, 94-4-101
 - soliciting, aiding or abetting in planning or commission of offense, 94-2-107 (3)
 - "solicit" defined, 94-2-101 (57)
 - statute imposing accountability, 94-2-107
 - victim not accountable, exception, 94-2-107 (3) (a)
- Adulterated commodities, selling or offering for sale as deceptive business practice, punishment, 94-6-308
 - "adulterated" defined, 94-6-308 (2)
- Aggravated offenses
 - assault, elements of offense, punishment, 94-5-202
 - burglary, elements of offense, punishment, 94-6-204 (2) (3)
 - kidnaping, ground for imposing death sentence, 94-5-304
 - nonsupport of child, elements of offense, punishment, 94-5-608 (2) (3)
 - promotion of prostitution, elements of offense, punishment, 94-5-603 (2) (3)
- Aircraft
 - tampering with aircraft as creating a hazard, punishment, 94-8-108
 - unauthorized use, elements of offense, punishment, 94-6-305
- Alcohol—See ALCOHOLIC BEVERAGES; ALCOHOLICS AND INTOXICATED PERSONS
- Alienation of affections, bringing or threatening litigation, 17-1206
- Animals
 - cruelty to animals, acts constituting offense, punishment, 94-8-106
 - injuring or killing domesticated hooved animal as criminal mischief, punishment, 94-6-102
 - livestock, illegal branding or altering or obscuring brand, punishment, 94-6-312
- Arrest
 - aiding offender to escape discovery or apprehension as obstructing justice, penalty, 94-7-303
 - escape, elements of offense, punishment, 94-7-306
 - justifiable use of force to prevent escape, 94-3-106 (1)
 - failure to aid peace officer, elements of offense, punishment, 94-7-304
 - "frisk" defined, 94-2-101 (16)
 - harboring or aiding offender as obstructing justice, punishment, 94-7-303
 - "official detention" defined, 94-7-306 (1)
 - resisting arrest, elements of offense, punishment, 94-7-301
 - unlawful arrest unavailable as defense, 94-7-301 (2)
 - unauthorized communication with person subject to official detention, punishment, 94-7-307 (2)
- Arson, 94-6-103, 94-6-104—See ARSON
- Assault, 94-5-201, 94-5-202—See ASSAULT
- Attainder of treason or felony by legislature prohibited, 1972 Const., II, 30
- Attempt, elements of offense, 94-4-103
 - abandonment of criminal effort as defense, 94-4-103 (4)
 - completion of offense not a bar to attempt conviction, 94-4-103 (5)
 - impossibility of committing attempted offense unavailable as defense, 94-4-103 (2)
 - punishment, 94-4-103 (3)
- Aviation gasoline, unlawful use as misdemeanor, 84-1855.1
- Bad check offenses, punishment, 94-6-309
- Bail-jumping, elements of offense, punishment, 94-7-308
- Bestiality, elements of offense, punishment, 94-5-505

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

- Bids for contracts, unlawful agreements for refunds or returns, penalty, 94-1104, redes. 51-401
- Bigamy, elements of offense, defenses, punishment, 94-5-604
 - marrying a bigamist, elements of offense, punishment, 94-5-605
- Big-game hunting violation as misdemeanor, 26-303.4
- Bounty law, fraudulent claims under, 46-1915
- Breach of promise, bringing or threatening litigation, 17-1206
- Bribery—See BRIBERY
- Burglary, 94-6-204—See BURGLARY
 - aggravated burglary, elements of offense, punishment, 94-6-204
- Capital punishment
 - aggravated kidnapping, grounds for imposing death sentence, 94-5-304
 - deliberate homicide, circumstances requiring death sentence, 94-5-105
 - justification of public servant executing death sentence, 94-3-109
- Causal relationship between conduct and result, 94-2-105
- Chain distributor schemes, selling or promoting, punishment, 94-6-308.1—See CHAIN DISTRIBUTOR SCHEMES
- Children
 - endangering welfare of child, elements of offense, punishment, 94-5-607
 - admissible evidence, 94-5-607 (4)
 - finances and forfeitures for benefit of child, authority of court, 94-5-607 (4)
 - explosives, unauthorized sale or gift to child, punishment, 94-5-609 (1) (a)
 - intoxicating substances, sale or gift to child, punishment, 94-5-609 (1) (b)
 - unlawful possession by child, punishment, 94-5-610
 - junk dealer, pawnbroker or secondhand dealer, receiving or purchasing goods from child, punishment, 94-5-609 (1) (c)
 - nonsupport of child, punishment, 94-5-608 (1) (3)
 - aggravated nonsupport, elements of offense, punishment, 94-5-608 (2) (3)
 - finances and forfeitures for benefit of child, authority of court, 94-5-608 (4)
 - unlawful transactions with children, 94-5-609
- Coloration of wheat, oats, rye or barley
 - required when products treated with injurious or toxic substances, 94-35-271.1, redes. 3-236
 - sale or offering for sale in violation of act, 94-35-271.2, redes. 3-237
 - violation of act requiring coloration, misdemeanor, 94-35-271.3, redes. 3-238
- Commencement of prosecution, time limitations, 94-1-106, 94-1-107—See LIMITATION OF ACTIONS
- Commercial tow cars improperly equipped, 32-21-161, 32-21-162
- Communications
 - criminal defamation, 94-8-111—See Criminal defamation, below
 - damage to property causing interruption or impairment of public communication services as criminal mischief, punishment, 94-6-102
 - failure to yield party line, 94-9-109—See TELEPHONE AND TELEGRAPH, Failure to yield party line
 - interrupting or impairing as criminal mischief, punishment, 94-6-102
 - privacy violations, punishment, 94-8-114
- Compounding a felony, acts constituting offense, punishment, 94-7-305
- Conspiracy, elements of offense, punishment, 94-4-102
 - unavailable defenses, 94-4-102 (2)
- Consumer loan act, violations, 27-228
- Contempt
 - bail-jumping as offense, court's power to punish unaffected, 94-7-308 (2)
 - court's power to punish not affected by Criminal Code, 94-1-104 (2)
 - criminal contempt, elements of offense, punishment, 94-7-309
- Contraceptive drugs or devices, unlawful methods of sale or distribution, punishment, 94-8-110.2—See CONTRACEPTIVES
- Corporations
 - annual report, failure to file, 15-22-125
 - criminal responsibility, 94-2-112, 94-2-113—See CORPORATIONS
 - signing of false documents by corporate officers or directors, 15-22-126

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

County zoning regulations, violation, 16-4707

Courts

bribery, elements of offense, punishment, 94-7-102—See BRIBERY

civil jurisdiction unaffected, 94-1-104

contempt

bail-jumping as offense, contempt power of court unaffected, 94-7-308 (2)

criminal contempt, elements of offense, punishment, 94-7-309

power to punish unaffected by Criminal Code, 94-1-104 (2)

contempt power unaffected by Criminal Code, 94-1-104 (2)

criminal contempt, elements of offense, punishment, 94-7-309

falsification in official matters, 94-7-201 to 94-7-210—See Falsification in official matters, below

gifts accepted or solicited from persons subject to jurisdiction, punishment, 94-7-105

“official proceeding” defined, 94-2-101 (39)

past official behavior, acceptance of compensation for, punishment, 94-7-104

perjury, 94-7-202—See PERJURY

physical evidence, tampering with or fabricating, punishment, 94-7-208

threat to influence exercise of discretion as criminal offense, punishment, 94-7-103

witnesses

definition, 94-2-101 (67)

tampering with witnesses, punishment, 94-7-207

Credit card offenses, 94-6-307

Credit union, unauthorized use of name, 14-606

Criminal act and particular mental state required, 94-2-103

absolute liability offenses, particular mental state not required, limitations, 94-2-104

reasonable belief negating required mental state as affirmative defense, 94-2-103 (4) to (6)

included offense, when conviction authorized, 94-2-103 (5)

Criminal defamation

acts constituting offense, 94-8-111 (2)

“defamatory matter” defined, 94-2-101 (12), 94-8-111 (1)

justification for communication, 94-8-111 (3)

proof required for conviction, 94-8-111 (4)

punishment, 94-8-111 (2)

Criminal mischief, acts constituting offense, punishment, 94-6-102

definitions, 94-2-101, 94-6-101

Criminal syndicalism, elements of offense, punishment, 94-7-503

definition, 94-7-503 (2)

owner of premises permitting assemblage for criminal syndicalism, punishment, 94-7-503 (4)

Criminal trespass, 94-6-201 to 94-6-203—See TRESPASS, Criminal trespass

Cruelty to animals, acts constituting offense, punishment, 94-8-106

Custodial interference, elements of offense, punishment, 94-5-305

Deceptive business practices, acts constituting offense, punishment, 94-6-308

Deceptive practices, acts constituting offense, punishment, 94-6-307

Defamation, 94-8-111—See Criminal defamation, above

Defenses

attempt, abandonment of criminal effort, 94-4-103(4)

bigamy, 94-5-604

consent of victim as defense, when ineffective, 94-2-111

“without consent” defined, 94-2-101 (68)

corporation's defense of due diligence to prevent commission of offense, 94-2-112 (2)

entrapment, 94-3-111

intoxicated or drugged condition, proof required, 94-2-109 (2)

justifiable use of force, 94-3-101 to 94-3-110

acts performed under compulsion of threat or menace of death or serious bodily harm, 94-3-110

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

Defenses (Continued)

justifiable use of force (Continued)

- affirmative defense, 94-3-112
- aggressor, use of force by, when justified, 94-3-105
- death sentence, justification of acts performed in legal execution, 94-3-109
- defense of property, 94-3-104
- definitions, 94-3-101
- escape, force used by peace officer to prevent, 94-3-106
- "force likely to cause death or serious bodily harm" defined, 94-3-101
- "forcible felony" defined, 94-3-101
- occupied structure, defense of, 94-3-103
- parent, guardian, master, or teacher, use of reasonable and necessary force by, 94-3-107
- resisting arrest, use of force not justified, 94-3-108
- self-defense, 94-3-102
- mental state, defense based on lack of, 94-2-103 (6)
- minor under age sixteen incapable of criminal offense, 94-2-109 (1)
- reasonable belief negating required mental state, 94-2-103 (4) to (6)
- sex offenses, 94-5-506—See Sex offenses, below
- theft, interest of offender in property no defense, 94-6-306

Definition of terms, 94-2-101

Defrauding secured creditors, elements of offense, punishment, 94-6-313

"security interest" defined, 94-6-313 (2)

Dentistry, practice without certificate, 66-919

Desecration of flags, acts constituting offense, punishment, 94-7-502

"flag" defined, 94-7-502 (1)

permissible uses, 94-7-502 (4)

Discriminatory practices, 64-312

Disorderly conduct

- acts constituting offense, punishment, 94-8-101
- creating hazardous or physically offensive condition, 94-8-101
- disturbing or disrupting lawful meetings or assemblies, 94-8-101
- failure to disperse, punishment, 94-8-102
- loud or unusual noises, 94-8-101
- rendering free ingress or egress to public or private places impassable, 94-8-101

Dog licensing act violations, misdemeanor, 16-4613

Driving while license suspended or revoked, 31-155

Escape, elements of offense, punishment, 94-7-306

aiding offender as obstructing justice, punishment, 94-7-303

"official detention" defined, 94-7-306 (1)

Explosives, manufacture, sale or possession for wrongful use as felony, 94-8-223 to 94-8-225—See EXPLOSIVES

Extortion

- intimidation, elements of offense, punishment, 94-5-203
- telephone, use for extortion, punishment, 94-8-114

False advertising as deceptive business practice, punishment, 94-6-308

False alarms

- bomb threat, communicating false report as intimidation, 94-5-203 (2)
- false report of fire, explosion or other catastrophe as disorderly conduct, punishment, 94-8-101
- fire or other emergency, punishment, 94-7-205

False imprisonment as unlawful restraint, elements of offense, punishment, 94-5-301

False report of fire, explosion or other catastrophe as disorderly conduct, punishment, 94-8-101

law enforcement authorities, false reports to, 94-7-206

Falsification in official matters

- definitions, 94-2-101, 94-7-201
- evidence, tampering with or fabricating, punishment, 94-7-208
- false alarms—See False alarms, above
- false swearing, elements of offense, punishment, 94-7-203—See OATHS
- impersonating a public servant, punishment, 94-7-210
- law enforcement authorities, false reports to, punishment, 94-7-206

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

Falsification in official matters (Continued)

- perjury, elements of offense, punishment, 94-7-202—See PERJURY
- public records or information, tampering with, punishment, 94-7-209
- unsworn falsification to mislead public servant, punishment, 94-7-204
- witnesses and informants, tampering with, punishment, 94-7-207

Felonies

- compounding a felony, acts constituting offense, punishment, 94-7-305
- definition of "felony," 94-2-101 (15)
- "forcible felony" defined, 94-2-101 (17), 94-3-101
- purpose and basis for classification of offenses, 94-1-105 (1)
- time limitation on prosecution, 94-1-106 (2)

Fighting as disorderly conduct, punishment, 94-8-101

Financial statement, procuring loan or credit by use of false or deceptive statement as deceptive practice, punishment, 94-6-307

Firearms—See FIREARMS

Fireworks regulatory act, penalty for violation, 69-2706

Fish illegally taken, possession or removal from state, 26-701

Fishing violations under reciprocal privileges, 26-228

Flag desecration, acts constituting offense, punishment, 94-7-502

"flag" defined, 94-7-502

Food, Drug and Cosmetic Act, violations of, 27-705

Food service establishments, offenses relating to, 27-625

Force, justifiable use of, 94-3-101 to 94-3-110—See Defenses, justifiable use of force, above

Forgery, acts constituting offense, punishment, 94-6-310—See FORGERY

Funeral directors and insurers, prohibited relations, 40-3521

Gambling offenses, 94-8-401 to 94-8-431—See GAMBLING

Game animals, contests based on size, 26-811

Game illegally taken, possession or removal from state, 26-701

Game wardens' retirement system, false claims under, 68-1423

Gate outside city or town, failure to close as criminal mischief, punishment, 94-6-102

Grain warehousemen

- operation without license, 3-228.7
- reports, falsification or failure to file, 3-227

Hazard, creating as criminal offense, punishment, 94-8-108

- creating hazardous condition as disorderly conduct, punishment, 94-8-101

Homicide, 94-5-101 to 94-5-105—See HOMICIDE

- state criminal jurisdiction, 95-304

death and cause of death in different counties, 95-406

Homosexuality, deviate sexual conduct, elements of offense, punishment, 94-5-505

Horse racing violations, 62-508

Hunting, negligence or failure to give assistance to injured person, punishment, 94-8-108

Incest, elements of offense, punishment, 94-5-606

Indecent exposure, elements of offense, punishment, 94-5-504—See Sex offenses, below

Industrial insurance account in agency fund, conversion of profits from, 92-1123

Industrial school resident, aiding in leaving school, 80-2212

Insurance agent, misappropriation of funds by as larceny, 40-3324

Insurance code violations, 40-2617

- false representation in applications and claims, 40-3522

Interference with custody of child or ward, elements of offense, punishment, 94-5-305

Intimidation, elements of offense, punishment, 94-5-203

Intoxicating substances

- definition, 94-2-101 (25)
- possession by child, punishment, 94-5-610
- sale or gift to child, punishment, 94-5-609

Intoxication—See also ALCOHOLICS AND INTOXICATED PERSONS

- criminal responsibility of intoxicated or drugged person, 94-2-109 (2)

Juries and jurors

- acceptance of pecuniary benefit from interested person, punishment, 94-7-104, 94-7-105
- bribery, elements of offense, punishment, 94-7-102
- "juror" defined, 94-2-101 (27)

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

Juries and jurors (Continued)

threat to influence vote, decision or exercise of discretion, punishment, 94-7-103
unauthorized communication or other improper influence, giving or receiving, punishment, 94-7-103

Justification as defense, 94-3-101 to 94-3-110—See Defenses, justifiable use of force, above

Kidnaping, 94-5-302 to 94-5-304—See KIDNAPING
venue of prosecution, 95-411

Knowledge of law not required, 94-2-103 (3)

Labeling requirements on paint and paint products, penalty for violation, 3-1511

Larceny, robbery, false pretenses or embezzlement, venue of offenses, 95-408

Libel, 94-8-111—See Criminal defamation, above

Livestock

cruelty to animals, elements, punishment, 94-8-106
illegal branding or altering or obscuring brand, punishment, 94-6-312
injuring or killing commonly domesticated animal as criminal mischief, 94-6-102
permitting to run at large in emergency areas as misdemeanor, penalty, 32-2818 to 32-2820
running at large in road construction area, 32-321

Lobbyist licensing and regulatory act, violations, 43-808

Lotteries, 94-8-301 to 94-8-311—See LOTTERIES

Machine gun, possession, use, or manufacture, 94-8-201 to 94-8-209—See FIREARMS

Manslaughter, 94-5-103, 94-5-104—See HOMICIDE

Marriage, declaration of marriage without solemnization, violation of act concerning, 48-130.2

Maxim silencer, manufacture, sale or possession for wrongful use as felony, 94-8-223 to 94-8-225—See FIREARMS

Meetings or lawful assemblies, disturbing or disrupting as disorderly conduct, punishment, 94-8-101

Mental state required for commission of offense, 94-2-103

absolute liability conduct as exception, limitations, 94-2-104

"knowingly" defined, 94-2-101 (28)

"knowingly" established if person acts "purposely," 94-2-110

negligence established if person acts "purposely" or "knowingly," 94-2-110

"negligently" defined, 94-2-101 (32)

particular result from offender's conduct as element of offense, when established, 94-2-105

"purposely" defined, 94-2-101 (53)

reasonable belief negating requisite mental state, 94-2-103 (4) to (6)

Mine shaft, failure to cover or fence, punishment, 94-8-108

Minors—See Children, above

Minor under age sixteen incapable of criminal offense, 94-2-109 (1)

Misconduct in office, 94-7-401—See Official misconduct of public servant, below

Mislabeled commodities, selling or exposing for sale as deceptive business practice, punishment, 94-6-308

"mislabeled" defined, 94-6-308 (3)

Mistreatment of prisoners, punishment, 94-8-113

Money or property obtained by gambling or trickery as larceny, 94-8-405

Mortician's and funeral director's act, violation, 66-2717

Motorboat and vessel regulatory act, penalty for violations, 69-3518

Motor vehicles

rendering vehicular or pedestrian traffic impassable as disorderly conduct, punishment, 94-8-101

unauthorized use, elements of offense, punishment, 94-6-305

Murder, 94-5-101 to 94-5-103—See HOMICIDE

Noise, loud or unusual noises as disorderly conduct, punishment, 94-8-101

Nonsupport of spouse, child, or other dependent, punishment, 94-5-608

aggravated nonsupport, elements of offense, punishment, 94-5-608 (2) (3)

fine or forfeiture for benefit of dependent, authority of court, 94-5-608

Nuisance, 94-8-107—See Public nuisance, below

Obscenity, 94-8-110 to 94-8-110.2—See OBSCENE CONDUCT

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

- Obstructing peace officer or other public servant, punishment, 94-7-302
 - illegal action of officer unavailable as defense, 94-7-302 (2)
- Occupational Disease Act, violation, penalty, 92-1340
- "Offense" defined, 94-2-101 (37)
- Official and political offenses
 - bribery, 94-7-102—See BRIBERY
 - definitions, 94-2-101, 94-7-101
 - gifts to public servants by persons subject to their jurisdiction, acceptance as criminal offense, punishment, 94-7-105
 - "public servant" defined, 94-2-101 (52)
 - "party official" defined, 94-2-101 (42)
 - pecuniary benefit, giving or accepting for past official or political acts, punishment, 94-7-104
 - "pecuniary benefit" defined, 94-2-101 (44)
 - threats or other improper acts to influence official, political or judicial discretion, punishment, 94-7-103
- Official misconduct of public servant
 - acts constituting offense, 94-7-401 (1)
 - district court, exclusive jurisdiction of proceedings, 94-7-401 (3)
 - leave of court required for filing of information, 94-7-401 (3)
 - impeachment or removal proceedings unaffected, 94-7-401 (5)
 - "public servant" defined, 94-2-101 (52)
 - punishment, 94-7-401 (2)
 - suspension and forfeiture of office, reinstatement upon acquittal, 94-7-401 (4)
- Optometry, practice without license, 66-1314
- Particular result from offender's conduct as element of offense, when established, 94-2-105
- Peace officers
 - failure to aid peace officer, elements of offense, punishment, 94-7-304
 - false report to law enforcement officers, punishment, 94-7-206
 - impersonating a public servant, punishment, 94-7-210
 - mistreatment of prisoners, punishment, 94-8-113
 - obstructing a peace officer, elements of offense, punishment, 94-7-302
 - illegal action of officer unavailable as defense, 94-7-302 (2)
 - resisting arrest, elements of offense, punishment, 94-7-301
 - unlawful arrest unavailable as defense, 94-7-301 (2)
- Perjury, elements of offense, punishment, 94-7-202—See PERJURY
- Petroleum products, violations with respect to, 60-233
- Political contributions by insurers, 40-3518
- Political parties
 - bribery, elements, punishment, 94-7-102
 - "party official" defined, 94-2-101 (42)
 - threats to influence party official or voter, elements of offense, punishment, 94-7-103
- Post-attack resource management, violation of rules and regulations, 77-1508
- Printing for state, obtaining from noncomplying contractor, 82-1138
- Prisons and prisoners—See PRISONS AND PRISONERS
- Privacy in communications, acts constituting violations, punishment, 94-8-114
- Privacy in communications, elements of offense, punishment, 94-8-114
 - threatening, profane or abusive language as disorderly conduct, punishment, 94-8-101
 - unauthorized communication with persons subject to official detention, elements, punishment, 94-7-307 (2)
 - wire tapping acts constituting privacy violations, punishment, 94-8-114
- Profanity
 - telephone communication, use of profanity in, 94-8-114
 - use of threatening, profane or abusive language as disorderly conduct, 94-8-101
- Property
 - creating hazardous or physically offensive condition as disorderly conduct, punishment, 94-8-101
 - credit card, obtaining property, labor or services by unlawful use of, punishment, 94-6-307

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

Property (Continued)

- damage or destruction of property with purpose to defraud insurer as criminal mischief, 94-6-102
- deception or threat causing disposition of property as deceptive practice, punishment, 94-6-307
- injury, damage or destruction of another's property as criminal mischief, punishment, 94-6-102
- promoting or procuring sale of property or services by false or deceptive statement as deceptive practice, punishment, 94-6-307
- rendering free ingress or egress to public or private places impassable as disorderly conduct, punishment, 94-8-101
- tampering with another's property as criminal mischief, 94-6-102

Prostitution, 94-5-601 to 94-5-603

- definitions, 94-2-101, 94-5-601
- elements of offense, punishment, 94-5-602
- house of prostitution
 - definition, 94-2-101 (20)
 - evidence admissible, 94-5-603 (4)
 - "inmate" defined, 94-2-101 (24)
- promoting prostitution, elements of offense, punishment, 94-5-603 (1) (3)
- aggravated promotion of prostitution, elements of offense, punishment, 94-5-603 (2) (3)

Public nuisance

- abatement, procedure, 94-8-107 (5)
- definition, 94-8-107 (1)
- gambling apparatus, possession as public nuisance, 94-8-409
- maintenance as criminal offense, 94-8-107 (2)
 - punishment, 94-8-107 (4)
- unequal annoyance or damage of no significance, 94-8-107 (3)

Public officer and employees

Public records or information

- falsification, 94-7-201 to 94-7-210—See Falsification in official matters, above
- tampering with records or information, elements of offense, punishment, 94-7-209

Public services, interruption or impairment as criminal mischief, punishment, 94-6-102

Rape, 94-5-503, 94-5-506—See Sex offenses, below

Real estate license act violations, 66-1940

Refuse disposal areas, violations with respect to, 69-4009

Resisting arrest, elements of offense, punishment, 94-7-301

- unlawful arrest unavailable as defense, 94-7-301 (2)

Retail installment sales act, penalty for violation, 74-611

Riot, elements of offense, punishment, 94-8-103

- incitement to riot, elements of offense, punishment, 94-8-104

Roadblocks established by peace officers, failure to stop, penalty, 95-618

Robbery, elements of offense, punishment, 94-5-401

- "in the course of committing a theft" defined, 94-5-401 (3)

School law violations not otherwise covered, 75-8307

Sedition

- bringing armed men into state, punishment, 94-7-504
- criminal syndicalism, 94-7-503—See Criminal syndicalism, above

Self-defense, 94-3-102—See Defenses, justifiable use of force, above

Sex offenses

- abortion, 94-5-611 to 94-5-624—See ABORTION

age of victim

- reasonable belief victim above sixteen as defense, 94-5-506 (1)
- sexual assault, victim under sixteen and offender three or more years older, 94-5-502 (3)
- sexual intercourse without consent, victim under sixteen and offender three or more years older, 94-5-503 (3)
- victim below age fourteen, belief to be above sixteen deemed unreasonable, 94-5-506 (1)

- bigamy, 94-5-604, 94-5-605—See Bigamy, above

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

Sex offenses (Continued)

- consent as defense, when ineffective, 94-2-111
 - victim voluntarily taking intoxicating substance, 94-5-506 (3)
 - "without consent" defined, 94-2-101 (68)
- definitions, 94-2-101, 94-5-501
- deviate sexual conduct, elements of offense, punishment, 94-5-505
 - "deviate sexual relation" defined, 94-2-101 (14)
- incest, elements of offense, punishment, 94-5-606
- indecent exposure, elements of offense, punishment, 94-5-504
 - voluntary intoxication by victim as defense to lack of consent, 94-5-506 (3)
- married persons
 - indecent exposure, spouse excluded, 94-5-504 (1)
 - persons living together as man and wife excluded from sex offenses, 94-5-506 (2)
 - sexual assault, spouse excluded, 94-5-502 (1)
 - sexual intercourse without consent, spouse excluded, 94-5-503
 - "spouse" defined for purposes of sex offenses, 94-5-506 (2)
- prostitution, 94-5-602—See Prostitution, above
- sexual assault, elements of offense, punishment, 94-5-502
 - bodily injury inflicted, 94-5-502 (3)
 - lack of consent based upon mental incapacity as defense, 94-5-506 (3)
 - "sexual contact" defined, 94-2-101 (55)
 - victim under age sixteen, offender three or more years older, 94-5-502 (3)
 - voluntary intoxication by victim as defense, 94-5-506 (3)
- sexual intercourse without consent, elements of offense, punishment, 94-5-503
 - bodily injury inflicted, 94-5-503 (3)
 - "sexual intercourse" defined, 94-2-101 (56)
 - victim under age sixteen, 94-5-503 (3)
 - voluntary intoxication by victim as defense to lack of consent, 94-5-506 (3)
 - "without consent" defined, 94-5-501

Sheep, removal from county without permit, 46-810

Solicitation, elements of offense, punishment, 94-4-101

definitions, 94-2-101 (57)

soliciting, aiding or abetting another in planning or commission of offense, accountability for, exceptions, 94-2-107 (3)

Steam engine or boiler, use in unsafe condition as creating hazard, punishment, 94-8-108

Subdivided lands, improper sale or leasing outside state, 67-2116

Support, 94-5-608—See Nonsupport of spouse, child, or other dependent, above

Tampering

definition, 94-2-101 (62)

physical evidence, tampering with or fabricating, punishment, 94-7-208

property of another, tampering with as criminal mischief, 94-6-102

public records or information, punishment, 94-7-209

witnesses and informants, punishment, 94-7-207

Telephone and telegraph

failure to yield party line or public telephone

acts constituting offense, punishment, defenses, 94-8-109 (1) (2)

false pretext to place an emergency call, punishment, 94-8-109 (3)

law to be printed in telephone directory, 94-8-109 (4)

Television, operation of VHF booster or VHF translator system, penalty for violations of act, 70-407

Theft and related offenses, 94-6-301 to 94-6-314—See THEFT

Threats

threatening language as disorderly conduct, punishment, 94-8-101

Time when offense committed, 94-1-106 (4)

Traffic, rendering vehicular or pedestrian traffic impassable as disorderly conduct, punishment, 94-8-101

Transportation, interruption or impairment as criminal mischief, punishment, 94-6-102

Trespass, 94-6-201 to 94-6-203—See TRESPASS, Criminal trespass

Trucks, failure to display owner's name on, 53-803

Unauthorized insurer, representing or aiding, 40-3401

Unclaimed property, failure to report or pay over to state treasurer, 67-2225

INDEX

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)

- Uniform facsimile signatures of public officials act, violation with intent to defraud, felony, 59-1304
- Union interference with operation of sole proprietor or two man partnership retail or amusement establishment, 41-1805
- Unlawful restraint, elements of offense, punishment, 94-5-301
- Utilities, interruption or impairment of public services as criminal mischief, punishment, 94-6-102
- Vocational school for girls resident, aiding in leaving school, 80-2212
- Voluntary act as material element of offense, 94-2-102
 - "acts" defined, 94-2-101 (1)
 - omission to perform duty as voluntary act, 94-2-102
 - possession as voluntary act, 94-2-102
 - definition, 94-2-101 (47)
- Warehouse receipts, crimes involving
 - delivery of goods without obtaining possession of receipt, 88-154
 - duplicate negotiable receipt, issuance, 88-152
- Water, damage to property interrupting or impairing supply as criminal mischief, punishment, 94-6-102
- Weights, measures and grades, deceptive business practices, punishment, 94-6-308
- Wells, failure to cover or fence, punishment, 94-8-108
- Wild turkey, taking in violation of act, misdemeanor, 26-512

CRIMINAL PROCEDURE

Admission, motion to produce or suppress, 95-1804, 95-1805

Appeals

- amicus curiae, brief of, 95-2417
- application of chapter, 95-2401
- authority of court, determination of appeal, 95-2426
- briefs
 - amicus curiae, brief of, 95-2417
 - appellant's brief, contents and arrangement, 95-2416
 - appendix, 95-2418
 - filing and service of, 95-2419
 - form, printing and binding, 95-2420
 - submission of case on briefs, court may direct argument, 95-2421
- calendar, placing causes upon calendar, setting for argument, 95-2424
- death sentence, stay of execution, 95-2406
- defendant, appeal from conviction and certain orders after judgment, scope of review, 95-2404
- determination on appeal, authority of reviewing court, 95-2426
- dismissal for failure to cause timely transmission or to docket appeal, 95-2410
- dismissal of appeal, effect of, 95-2411
- district court jurisdiction, 1972 Const., VII, 4
- docket
 - docketing appeal, 95-2410
 - entry and notice of orders and judgments, 95-2422
- errors on appeal
 - jurisdictional or constitutional rights noticed, 95-2425
 - matters not affecting substantial rights disregarded, 95-2425
 - reversal for error by trial court against appellant, error must be prejudicial, 95-2412
- filing of papers, 95-2413
 - briefs, time for filing, number of copies, consequences of failure to file, 95-2419
 - petitions for rehearing, 95-2423
 - time, computation and extension of, 95-2414
- fine, stay of execution, 95-2406
- form of briefs, motions, and other papers, 95-2420
- habeas corpus, appeal from order discharging petitioner, 95-2714
- hearings, oral arguments, requirements, 95-2421
 - petition for rehearing, 95-2423
- imprisonment, defendant admitted to bail, stay of execution, 95-2406
- indigent appeals, procedure, 95-2428
- justices' courts, procedure for trial in district court, 95-2009

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Appeals (Continued)

- mailing of copy of judgment or order and mailing of notice of date of entry, duties of clerk, 95-2422
- motions, writing required, contents, time for answer, 95-2415
 - filing with judge, 95-2413
 - form, printing and binding, 95-2420
- notice of appeal
 - contents, service, 95-2405
 - exclusive method of review, 95-2401
- opinion of court, issuance of mandate, return of record and termination of jurisdiction, 95-2427
- oral argument, requirements, 95-2421
 - calendar, withdrawal of records, 95-2424
 - petitions for rehearing, 95-2423
- orders, rulings, or proceedings of trial court against respondent, review on appeal, 95-2412
- parties, appellant and respondent, 95-2405
- police courts, procedure for trial in district courts, 95-2009
 - finances for city ordinance violations, disposition of, 95-2008.1
- post-conviction hearing, 95-2601 to 95-2608—See Post-conviction hearing, below
 - appeal from order, 95-2608
- probation, effect of appeal, 95-2406
- procedural rules promulgated by supreme court, 1972 Const., VII, 2; 95-2801 to 95-2806, redes. 95-103 to 95-108
- record on appeal
 - agreed statement as record, 95-2408
 - composition of record, 95-2408
 - correction or modification of record, 95-2408
 - filing of record, 95-2410
 - indigent appeals, procedure, 95-2428
 - permission to take from clerk's office, 95-2424
 - statement of evidence or proceedings, 95-2408
 - transcript of proceedings, duties of parties, costs, 95-2408
 - transmission of record, time for, duty of appellant, duty of clerk, extension of time, 95-2409
- relief pending appeal, 95-2406
- remand of cause to trial court, return of record and termination of jurisdiction, 95-2427
- reversal of judgment, defendant discharged, 95-2430
- scope of appeal
 - defendant, appeal from conviction and certain orders after judgment, scope of review, 95-2404
 - state, appeals from certain court orders or judgments, 95-2403
- sentence, review of sentence, 95-2211, 95-2501 to 95-2504—See Sentence and judgment, review of sentence, below
- service of papers, 95-2413
 - briefs, time for, number of copies, 95-2419
 - time, computation and extension of, 95-2414
- several defendants, appeal by one authorized, 95-2429
- state, appeals from certain orders or judgments authorized, 95-2403
 - effect of appeal by state, 95-2407
- stay of execution, 95-2406
- substantive rights of parties, consideration on appeal, 95-2412
- supreme court jurisdiction, 1972 Const., VII, 2
- suspension of statutory requirements authorized, 95-2402
 - time, computation and extension of, 95-2414
- time for appeal, 60 days after rendition of judgment, 95-2405
- title of case not changed, 95-2405

Appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902

Arraignment

answer, time allowed, 95-1607

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Arraignment (Continued)

- definition, 95-1601
- irregularity of arraignment, effect, 95-1608
- joint defendants, 95-1605
- place of arraignment, 95-1602
- presence of defendant, 95-1603, 95-1604
- procedure on arraignment, 95-1606

Arrest, 95-601 to 95-619—See ARRESTS

Bail, 1972 Const., II, 21; 95-1101 to 95-1123—See BAIL

Change of judge, 95-1709

Change of venue, 95-401, 95-1710

- justices' and police courts, 95-2003

Charging offense, methods of prosecution, 95-1501, 95-1502

- "charge" defined, 95-203
- justice and police courts, 95-2001

Close Pursuit Act, 95-619

Competency of accused

- death sentence, determination of mental fitness, 95-2304, 95-2305
- defense of mental disease or defect excluding responsibility
 - affirmative defense, notice, form of verdict and judgment on finding of irresponsibility, 95-503
 - determination of irresponsibility on basis of psychiatrist's report, judgment, 95-507
 - legal effect of acquittal, commitment of defendant, release or discharge, 95-508
 - requirements, 95-501
- definition of "mental disease or defect," 95-501
- evidence of mental disease or defect, when admissible, 95-502
- evidence, statements for purposes of examination or treatment inadmissible except on issue of mental condition, 95-509
- examination of defendant, rights of defendant or state, form of expert testimony, 95-505, 95-507
- expense of determination and confinement, county responsible, recovery from other political subdivisions, 95-506
- fitness to proceed, mental disease or defect excluding
 - effect of finding of unfitness, proceedings if fitness regained, 95-506
 - requirements, 95-504
- privilege, statements for purposes of examination or treatment inadmissible except on issue of mental condition, 95-509
- psychiatric examination of defendant, rights of defendant or state, form of expert testimony, 95-505, 95-507
- recommitment after conditional release, 95-508
- release of defendant acquitted on ground of mental disease or defect, hearing, burden of proof, 95-508
- test for mental disease or defect excluding responsibility, 95-501

Complaint

- amending charge, 95-1505
- appearance of person arrested without warrant, filing complaint, 95-901
- form of charge, 95-1503
- joinder of offenses and of defendants, 95-1504
- prior conviction, charge of, notice and procedure, 95-1506
- prosecution of offense by complaint, 1972 Const., II, 20; 95-1501, 95-1502
- justice and police courts, 95-2001

Confession, motion to produce or suppress, 95-1804, 95-1805

Construction of Code of Criminal Procedure, 95-102

Continuance, pretrial motion, requirements, 95-1708

Conviction—See Sentence and judgment, below

- definition, 95-204

Coroner's office, 95-801 to 95-814—See COUNTY CORONER

Counsel, right to, 1972 Const., II, 24

- appearance of arrested person, duty of court to inform defendant of rights, 95-902
- duration of appointment of counsel, 95-1003
- duty of court to inform defendant, 95-902, 95-1001
- felony charge, furnishing counsel required, when, 95-1001

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Counsel, right to (Continued)

- misdemeanor charge, furnishing counsel, when, 95-1001
- payment of appointed counsel, cost charged to responsible agency, 95-1005
- post-conviction criminal action or proceeding, appointment of counsel authorized, 95-1004
- public defender's office, authority of counties to establish, 95-1006
- waiver of counsel, 95-1002

Courts, definition, 95-205

Death sentence

- appeals, stay of execution, 95-2406
- execution of sentence, procedure, 95-2303
- mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305
- offense punishable by death or imprisonment, right of court to pronounce sentence of either, 95-2206.1
- pregnant female, proceedings, 95-2306, 95-2307

Defenses and objections raised before trial, 95-1701, 95-1702

Definitions

- arraignment, 95-1601
- arrest, 95-601
- charge, 95-203
- conviction, 95-204
- coroner's inquest, 95-803
- court, 95-205
- gender, masculine gender includes feminine, 95-202
- guaranteed arrest bond certificate, 95-1121
- judge, 95-206
- judgment, 95-207
- magistrate, 95-208
- meanings of words and phrases, 95-201
- mental disease or defect, 95-501
- new trial, 95-2101
- notice to appear, 95-601
- offense, 95-209
- peace officer, 95-210
- search warrant, 95-703
- sentence, 95-211
- singular term includes plural, 95-202
- summons, 95-601
- warrant of arrest, 95-601

Depositions, 95-1802

Discharge of defendant

- granting of motion to dismiss, 95-1706
- not guilty judgment, 95-2202
- reversal of judgment on appeal, 95-2430

Discovery, applicable rules, 95-1803

Dismissal of action, complaint, information, or indictment

- misdemeanor charge not brought to trial within six months, 95-1703
- motion of court or application of attorney prosecuting, 95-1703
- pretrial motion, effect of determination, 95-1706

Disqualification of judge, requirements and procedure, 95-1709

Double jeopardy prohibited, 1972 Const., II, 25; 95-1711

Due process of law, 1972 Const., II, 17

Evidence

- books, documents and objects, subpoena authorized, inspection or copying by defendant, 95-1801, 95-1803
- confession or admission, motion to produce or suppress, 95-1804, 95-1805
- depositions, 95-1802
- illegally seized evidence, motion to suppress, 95-1806

Examination of defendant, preliminary examination, 95-1201 to 95-1204—See Preliminary examination, below

Examination to determine competency of accused, 95-505, 95-507

Execution of sentence, 95-2301 to 95-2312—See Sentence and judgment, execution of sentence, below

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

- Former prosecution, when bar to subsequent prosecution, 1972 Const., II, 25; 95-1711
- Grand jury, 1972 Const., II, 20; 95-1401 to 95-1410—See GRAND JURY
- Guilty plea, conditions for acceptance, withdrawal
 - district court, 95-1902
 - justices' and police courts, 95-2004
- Gunshot or stab wounds to be reported by physician, nurse or other person treating victim, 66-1050
 - immunity from liability, 66-1051
- Habeas corpus, 1972 Const., II, 19; 95-2701 to 95-2716—See HABEAS CORPUS
- Indictment, 1972 Const., II, 20; 95-1401 to 95-1410—See GRAND JURY
- Information
 - amending charge, 95-1505
 - application for leave to file information, requirements, 95-1301
 - commencement of prosecution by information, 1972 Const., II, 20; 95-1501, 95-1502
 - district court judge, information against, procedure, 95-1301
 - failure of county attorney to file, duty of court, 95-1303
 - form of charge, 95-1503
 - joinder of offenses and of defendants, 95-1504
 - prior conviction, charge of, notice and procedure, 95-1506
 - time for filing by county attorney, effect of failure, 95-1302
- Initial appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
- Insanity, 95-501 to 95-509—See Competency of accused, above
- Interstate agreement on detainers, text and enactment, 94-1101-1, redes. 95-3131
 - co-operation of public agencies in enforcement, 94-1101-3, redes. 95-3133
 - co-ordinator of agreement, appointment and duties, 94-1101-6, redes. 95-3136
 - delivery of prisoner by institution on detainer, 94-1101-5, redes. 95-3135
 - district courts to function under agreement, 94-1101-2, redes. 95-3132
 - escape from custody on detainer, penalty, 94-1101-4, redes. 95-3134
- Interstate detainer, escape from custody on, 94-1101-4, redes. 95-3134
- Joinder of offenses and of defendants in making charge, 95-1504
 - appeal by one defendant authorized, 95-2429
- Judges
 - definition, 95-206
 - disqualification, substitution of judge, requirements and procedure, 95-1709
- Judgments, 95-2201 to 95-2216—See Sentence and judgment, below
 - definitions, 95-207, 95-211
- Juries and jurors
 - coroner's inquest, number of jurors, jurors to be sworn, 95-803, 95-804
 - district court
 - admonition upon adjournment of court, 95-1913
 - alternate jurors, 95-1909
 - challenges, 95-1909
 - examination of jurors, 95-1909
 - formation of trial jury, number of drawn, 95-1905
 - instructions to jury, 95-1910
 - list of prospective jurors furnished, 95-1909
 - number of jurors, 95-1901
 - objection to jury panel, motion to discharge, 95-1908
 - qualifications and exemptions, 95-1909
 - reduction in number of jurors upon agreement of parties, 95-1901
 - retirement of jury, 95-1913
 - right to jury trial, 95-1901
 - separation during trial, 95-1913
 - verdicts—See Verdicts, below
 - view of place of offense or property, 95-1912
 - waiver of jury trial upon written consent of parties, 95-1901
 - grand jury, 1972 Const., II, 20; 95-1401 to 95-1410—See GRAND JURY
 - justices' courts, 95-2004 to 95-2006—See Justices' courts, below
 - police courts, 95-2004 to 95-2006—See Police courts, below
 - right to jury trial, 1972 Const., II, 26; 95-1901, 95-2004
 - speedy public trial by impartial jury, 1972 Const., II, 24
 - unanimous verdict required, 1972 Const., II, 26

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Jurisdiction

- appeals, remand of cause and termination of jurisdiction, 95-2427
- coroner, jurisdiction of, 95-812
- district courts, 1972 Const., VII, 4; 95-301
- justices' courts, 1972 Const., VII, 5; 95-302
- municipal courts, 95-303
- police courts, 95-303
- state criminal jurisdiction, 95-304
- supreme court, 1972 Const., VII, 2

Justices' courts

- change of place of trial, 95-2003
- disqualification of justice, magistrate, or justice of the peace, 95-2010
- docket required, contents, 95-2002
- guilty plea, conditions for acceptance, 95-2004
- juries and jurors
 - discharge of jury, 95-2006
 - examination of jurors, challenges, 95-2005
 - formation of trial jury, 95-2005
 - number of jurors, 95-2005
 - right to trial by jury, waiver, 95-2004
 - verdict, 95-2006

- jurisdiction of criminal cases, 1972 Const., VII, 5; 95-302
 - dangerous drug act cases, no jurisdiction in, 95-302
- preliminary examination, 95-1201 to 95-1204
- prosecutions commenced by complaint, 95-2001
- sentence and judgment, execution of judgment, 95-2007, 95-2008
- trials

- guilty plea, conditions for acceptance, 95-2004
- issue, designation for trial, 95-2004
- preparation for trial, time for, 95-2004
- presence of defendant, requirements, 95-2004
- right to jury trial, waiver, 95-2004

verdicts

- number of jurors required to concur, 95-2006
- poll of jury, 95-2006
- return, requirements, 95-2006
- several defendants, requirements, 95-2006

Magistrate, definition of, 95-208

Mental disease or defect of accused, 95-501 to 95-509—See Competency of accused, above

Motions

- appeals, requirements, 95-2415
 - filing with judge, 95-2413
- new trial, 95-2101
- post-conviction hearing, time for motion, 95-2604
- pretrial motions, 95-1701 to 95-1710—See Pretrial motions, below

Multiple offenses committed in same transaction or conduct, when conviction limited to one offense, 95-1711

New trial, definition and effect, motion for, 95-2101

- appeal, authority to order new trial, 95-2426
- bail, provisions for, 95-1119

Notice to appear, issuance, form, failure to appear, 95-614

Peace officers

- arrests, 95-608—See ARRESTS, Peace officer
- bail, acceptance, procedure, 95-1103, 95-1104
- definition, 95-2010

Police courts

- appeals, procedure for trial in district court, 95-2009
 - finances for city ordinance violations, disposition of, 95-2008.1
- change of place of trial, 95-2003
- docket required, contents, 95-2002
- juries and jurors
 - discharge of jury, 95-2006

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Police courts (Continued)

- juries and jurors (Continued)
 - examination of jurors, challenges, 95-2005
 - formation of trial jury, 95-2005
 - number of jurors, 95-2005
 - right to trial by jury, waiver, 95-2004
 - verdict, 95-2006
- jurisdiction of criminal cases, 95-303
- prosecutions commenced by complaint, 95-2001
- sentence and judgment, execution of judgment, 95-2007, 95-2008
 - finer for city ordinance violations tried on appeal, disposition of, 95-2008.1
- trials
 - guilty plea, conditions for acceptance, 95-2004
 - issue, designation for trial, 95-2004
 - preparation for trial, time for, 95-2004
 - presence of defendant, requirements, 95-2004
 - right to jury trial, waiver, 95-2004
- verdicts
 - number of jurors required to concur, 95-2006
 - poll of jury, 95-2006
 - return, requirements, 95-2006
 - several defendants, requirements, 95-2006

Post-conviction hearing

- appeal from order entered on motion, 95-2608
- commencement of proceedings by petition, 95-2602
- contents of petition, 95-2603
- grounds for petition, 95-2601
- proceedings on petition, notice, proof, order, 95-2605
- record required, 95-2606
- successive petitions prohibited, 95-2607
- time for motion, any time after conviction, 95-2604

Prejudice

- change of place of trial, requirements and procedure, 95-1710
 - justice and police courts, 95-2003
- substitution of judge, requirements and procedure, 95-1709

Preliminary examination

- definition, 95-1201
- deposition of witness after examination, requirements, 95-1204
- exclusion and separation of witnesses, 95-1203
- proceedings at examination, 95-1202
- recognizance by witness after examination, requirements, 95-1204
- waiver of preliminary examination, defendant held to answer, 95-1202

Presentence investigations, contents, availability of report, 95-2203 to 95-2205

Pretrial motions

- arraignment, motions allowed in answer, 95-1607
- books, documents and objects, subpoena authorized, inspection or copying by defendant, 95-1801, 95-1803
- confession or admission, motions to produce or suppress, 95-1804, 95-1805
- continuance, requirements for motion, 95-1708
- defenses and objections raised before trial, 95-1701, 95-1702
- denial of motion, procedure, 95-1706
- depositions, 95-1802
- discovery, applicable rules, 95-1803
- dismissal of action on motion of court or application of attorney prosecuting, 95-1703
- disqualification of judge, requirements and procedure, 95-1709
- evidence illegally seized, motion to suppress, 95-1806
- granting of motion to dismiss, procedure, 95-1706
- hearing on motion, 95-1705
- jury panel, objection to, motion to discharge, 95-1908
- substitution of judge, requirements and procedure, 95-1709
- time of making motion, 95-1704
- transfer of trial, motion based on lack of jurisdiction or improper place, 95-1707

Prior conviction, charge of, notice and procedure, 95-1506

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

- Prisoner furlough program—See PRISONS AND PRISONERS, Prisoner furlough program
- Prosecution, methods of charging offense, 95-1501, 95-1502
 - justice and police courts, 95-2001
- Public defender's office, 95-1006
- Purpose of Code of Criminal Procedure, 95-102
- Recognizance
 - preliminary examination of criminal defendant, recognizance by witness after examination, 95-1204
 - release authorized, duties of court, 95-1106
- Review division of supreme court
 - appointment of district court judges, 95-2501
 - decisions, procedure and disposition of, 95-2503
 - meetings, where held, 95-2501
 - number of judges, number required for decision, 95-2501
 - procedure for review, 95-2502
 - scope of act, 95-2504
- Rights of defendant
 - appear and defend in person, 1972 Const., II, 24
 - change of place of trial, 95-1710, 95-2003
 - compelling incriminating testimony, immunity from prosecution, 95-1807
 - counsel, right to, 1972 Const., II, 24; 95-1001 to 95-1006
 - initial appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
 - jury trial, 1972 Const., II, 26; 95-1901, 95-2004
 - unanimous verdict required, 1972 Const., II, 26
 - restoration of rights on termination of state supervision, 1972 Const., II, 28
 - self-incrimination, compulsion prohibited, 1972 Const., II, 25
 - speedy public trial, 1972 Const., II, 24
 - misdemeanor charge, 95-1703
 - substitution of judge, 95-1709
 - venue of prosecution, right to change, 1972 Const., II, 24
 - witnesses, right to meet face to face and have process to compel attendance, 1972 Const., II, 24
- Roadblocks, arrests at, 95-618
- Rules of supreme court, 1972 Const., VII, 2; 95-2801 to 95-2806, redes. 95-103 to 95-108
 - See Supreme court rules, below
- Scope of Code of Criminal Procedure, 95-101
- Search and seizure, 1972 Const., II, 11; 95-701 to 95-708—See SEARCH AND SEIZURE
- Second offense, charge of prior conviction, notice and procedure, 95-1506
- Self-incrimination, compulsion prohibited, 1972 Const., II, 25
- Sentence and judgment
 - board of pardons, statistical data transmitted to, 95-2210
 - civil and constitutional rights of offender unaffected, exception, 95-2227
 - combination of sentences authorized, 95-2206
 - commutation of prison sentence to commitment to juvenile facilities, 80-2210
 - commutations, governor's power to grant, 1972 Const., VI, 12
 - construction of chapter, liberal construction, 95-2201
 - county jail as place of imprisonment in absence of statutory designation, 95-2206.2
 - credit for incarceration prior to conviction, 95-2215
 - credit for time served, 95-2214
 - cruel and unusual punishments prohibited, 1972 Const., II, 22
 - death sentence, execution of, 95-2303—See Death sentence, above
 - deferment of imposition of sentence, 95-2206
 - withdrawal of plea allowed, effect, 95-2207
 - definitions, 95-207, 95-211
 - entry of judgment and judgment roll, 95-2209
 - execution of sentence
 - commitment of defendant, 95-2206, 95-2301
 - death sentence, 95-2303—See Death sentence, above
 - fine, execution of, 95-2302

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Sentence and judgment (Continued)

execution of sentence (Continued)

- justices' courts, 95-2008
- police courts, 95-2008
- sheriff, commitment of defendant to custody of, 95-2301
- executive clemency, 1972 Const., VI, 12
- felony penalty not specified, maximum sentence, 95-2206.4
- finest for offense, imposition of, 95-2206
 - appeal, stay of execution, 95-2406
 - disposition of fines, 95-2228
 - excessive fines prohibited, 1972 Const., II, 22
 - execution of, 95-2302
 - lien of judgment to pay fine, 95-2208
 - remission by governor, 1972 Const., VI, 12
- guilty verdict, sentence and judgment within reasonable time, 95-2202
- imposition of sentence, exclusive duty of judge, 95-2212
- investigations, contents of presentence investigation, availability of report, 95-2203 to 95-2205
- justices' courts, 95-2007, 95-2008
- mental disease or defect excluding responsibility, form of verdict and judgment on finding of irresponsibility, 95-503
- merger of sentences, 95-2213
- misdemeanor penalty not specified, maximum sentence, 95-2206.3
- not guilty judgment, discharge of defendant, 95-2202
- open court, judgment rendered in, 95-2202
- persistent felony offender, definition, sentencing, 95-1507
- persistent felony offender designation for parole eligibility purposes, requirements for, 95-2206.5
- police courts, 95-2007, 95-2008
- post-conviction hearing, 95-2601 to 95-2608—See Post-conviction hearing, above
- presentence investigations, contents, availability of report, 95-2203 to 95-2205
- probation authorized, 95-2206
- punishment founded on principles of prevention and reformation, 1972 Const., II, 28
- repealed statute specifying misdemeanor penalty, maximum penalty, 95-2206.3
- restoration of rights on termination of state supervision, 1972 Const., II, 28
- review division of supreme court, 95-2501 to 95-2504—See Review division of supreme court, above
- review of sentence, 95-2211
- sentences enumerated, 95-2206
- separate sentences, merger of sentences, 95-2213
- stay of execution of sentence authorized, 95-2206
- suspending or deferring sentence subject to restrictions or conditions authorized, 95-2206
- Western Interstate Corrections Compact, 95-2308 to 95-2312
- work release program for prisoners, 95-2216

Stop and frisk law, 95-719

Subpoenas

- accused's right to have process to compel attendance of witnesses, 1972 Const., II, 24
- coroner's inquest, subpoena of witnesses, compelling attendance, 95-805, 95-806
- discovery, subpoena as discovery device, 95-1803
- issuance, requirements and form, 95-1801

Substitution of judge, requirements and procedure, 95-1709

Summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613

Supreme court rules

- adoption of rules of pleading, practice and procedure, authority of court, 1972 Const., VII, 2; 95-2801, redes. 95-103
- advisory committee, appointment, members, duties, 95-2801, redes. 95-103
- effective date of rules, 95-2805, redes. 95-107
- expiration date of rule-making power, 95-2805, redes. 95-107
- legislature's right to adopt rules not abridged, 95-2806, redes. 95-108
- present laws and rules in force until modified or superseded, 95-2804, redes. 95-106

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Supreme court rules (Continued)

- promulgation of rules of pleading, practice and procedure, authority of court, 95-2801, redes. 95-103
- proposed rules, distribution of and hearings before adoption, 95-2803, redes. 95-105
- rights of state or a defendant, not abridged, enlarged or modified, 95-2801, redes. 95-103

Transfer of trial

- justice and city courts, 95-2003
- lack of jurisdiction or proper venue, 95-1707
- prejudice existing in county, 95-1710

Trials

- discharge of co-defendant to become witness, 95-1504
- district court
 - adjournment of court, 95-1914
 - admonition to jury, 95-1913
 - arguments of counsel, 95-1910
 - county attorney, failure to attend, appointment of substitute, 95-1903
 - degree of offense, jury to find, 95-1915
 - discharge of defendant, when, 95-1916
 - guilty plea, conditions for acceptance; withdrawal, 95-1902
 - instructions to jury, 95-1910
 - issues, designation for jury trial, 95-1901
 - jury panel, objection, motion to discharge, 95-1908
 - jury trial, 95-1901—See Juries and jurors, district court, above
 - lesser offense, conviction of authorized, 95-1915
 - not guilty plea, issues, 95-1901
 - order of prosecutions, 95-1906
 - order of trial, 95-1910
 - departure from, authority for, 95-1911
 - preparation for trial, reasonable time allowed, 95-1907
 - presence of defendant, mistrial for absence, 95-1904
 - retirement of jury, 95-1913
 - right to jury trial, number of jurors, 95-1901
 - separation of jurors during trial, 95-1913
 - several defendants, verdicts, 95-1915
 - view of place of offense or property, 95-1912
 - waiver of jury, law and fact determined by court, 95-1901
- justices' courts, method of trial, 95-2004—See Justices' courts, above
- mental disease or defect excluding fitness to proceed
 - requirements, procedure, 95-504 to 95-506
- new trial, definition and effect, motion for, 95-2101
 - appeal, authority to order new trial, 95-2426
 - bail, provisions for, 95-1119
- police courts, method of trial, 95-2004—See Police courts, above
- right to jury trial, 1972 Const., II, 26; 95-1901, 95-2004
 - speedy public trial by impartial jury, 1972 Const., II, 24
 - unanimous verdict required, 1972 Const., II, 26
- several defendants, verdicts, 95-1915
 - appeal by one defendant authorized, 95-2429
- verdicts—See Verdicts, below

Venue

- aiding, abetting, or procuring commission of offense in another county, 95-404
- bigamy, trial where marriage or cohabitation occurred, 95-410
- boundary, offense committed on or near, 95-403
- change of venue, 95-401, 95-1710
 - accused's right to change, 1972 Const., II, 24
 - justice and police courts, 95-2003
- commencement of offense outside state, trial where offense consummated, 95-407
- death and cause of death in different counties, 95-406
- escape from prison, trial in any county, 95-409
- kidnaping, trial where victim has traveled or been confined, 95-411
- objections to place of trial, waiver, hearing, 95-401, 95-1710
 - justice and police courts, 95-2003
- stolen property, trial in county where control exerted, 95-408
- telephone misuse, venue of offenses, 94-35-221.5

INDEX

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Venue (Continued)

- transit, offenses committed while in, 95-405
- treason, trial in any county, 95-412
- trial in county where offense committed, 95-401
- two or more acts occurring in different counties, 95-402

Verdicts

- coroner's inquest, writing required, contents, 95-807
- district court
 - degree of offense, jury to find, 95-1915
 - directed verdict, 95-1909
 - general verdict to each offense, 95-1909
 - lesser offense, conviction of authorized, 95-1915
 - number required to concur, 95-1915
 - poll of jury, 95-1915
 - return of verdict, form, 95-1915
 - several defendants, 95-1915
 - unanimous verdict required, 95-1915
- justices' courts, 95-2006
- police courts, 95-2006
- unanimous verdict required, 1972 Const., II, 26

Warrant for arrest, constitutional requirements, definition, issuance, procedure, 1972 Const., II, 11; 95-601, 95-603 to 95-605

Warrant for search and seizure, constitutional requirements, definition, issuance, procedure, 1972 Const., II, 11; 95-703 to 95-711

Western Interstate Corrections Compact, 95-2308 to 95-2312

Witnesses

- accused's right to meet face to face and have process to compel attendance, 1972 Const., II, 24
- compelling incriminating testimony, immunity from prosecution, 95-1807
- competency, 95-3010, 95-3011
- coroner's inquest, subpoena of witness, compelling attendance, writing and filing of testimony, 95-805, 95-806, 95-808
- detention of person as material witness, limitations on, 1972 Const., II, 23
- discharge of co-defendant to become witness, 95-1504
- expenses of witnesses, 95-1801
- indigent defendants, procedure for obtaining subpoenas, 95-1801
- nonresidents, "witness" and "state" defined, 95-1808
- preliminary examination, exclusion and separation, recognizance by or deposition after examination, 95-1203, 95-1204
- subpoena, requirements and form, 95-1801

CULTURAL RESOURCES

Preservation and administration, 1972 Const., IX, 4

CURTESY

Estate abolished, 91A-2-112

D

DAIRIES AND DAIRY PRODUCTS

Dairy cattle, inspection and tuberculin test by department of livestock, 46-211

Licensing of milk plants and dairies by department of livestock, 46-232—See LIVE-STOCK, Sanitary conditions

Manufactured dairy products

- access of department to premises of dairy or plant, 3-24-114
- adulterated products, sale and use prohibited, 3-24-120
- adulteration of milk or cream unlawful, 3-24-124
- buyers and plants to make records available to department, 3-24-116
- cheese products, labeling and refrigeration, 3-24-117
 - unpasteurized milk or cream, cheese made from, 3-24-126
- condemnation of unsafe milk, 3-24-104
 - removal from market of product constituting health hazard, 3-24-113
- construction of plants, plans to be approved, 3-24-110

INDEX

References are to Title and Section numbers

DAIRIES AND DAIRY PRODUCTS (Continued)

Manufactured dairy products (Continued)

- containers and equipment, standards for cleanliness and condition, 3-24-134
- co-operative agreements with other agencies, 3-24-115
- deceit in grade, measure or test of milk and cream unlawful, penalty, 3-24-138, 3-24-139
- definitions of terms, 3-2404, 3-2497
- department of livestock, regulation by, 3-2488
- enforcement of laws and rules, 3-2493
- evidence used in court or at hearings, 3-24-109
- fats added, sale or importation of products prohibited, 3-24-121
- fees for licenses, 3-24-112.1
- filled dairy products unlawful, 3-24-122
- food service establishment, plant license not required for manufacture of nondairy products, 3-24-112.1
- grading of milk required, 3-24-104
 - license required for grader, weigher and sampler, 3-24-105
- hearings on suspension, revocation or denial of license, 3-2491, 3-24-106
- identity standards, conformity required, 3-24-123
- imported products, sanitary standards for, 3-24-118
- impure products, sale or use prohibited, 3-24-120
- injunction to prevent violations, 3-2496
- investigation of complaints and violations, 3-2496
 - access of department to premises of dairy or plant, 3-24-114
- labeling of products
 - cheese containers, 3-24-117
 - cheese made from unpasteurized milk or cream, 3-24-126
 - deceit in grade, measure or test of milk and cream unlawful, penalty, 3-24-138, 3-24-139
 - Food, Drug and Cosmetic Act requirements, conformity to, 3-24-136
 - frozen desserts containing animal or vegetable fat, 3-24-135
 - name of manufacturer and wholesaler or retailer to be shown, 3-24-119
 - pasteurized products, 3-24-128
- licenses required
 - appeal to district court from suspension, denial or revocation of license, 3-24-106
 - cream station, fee, 3-24-112.1
 - cream station owned by licensed plant, separate license not required, 3-24-112.1
 - dairy produced milk for manufacturing purposes, fee, 3-24-112.1
 - delinquency in renewal of license, penalty, 3-24-101, 3-24-112.1
 - department's authority to issue licenses, 3-2490
 - expiration and renewal of licenses, 3-24-101, 3-24-112.1
 - fees for licenses, 3-24-112.1
 - food service establishment, plant license not required for manufacture of non-dairy products, 3-24-112.1
 - grader, weigher and sampler to be licensed, fee, 3-24-105, 3-24-112.1
 - hauler, license required, fee, 3-24-100, 3-24-112.1
 - health and environmental sciences department license requirements unaffected, 3-24-129
 - milk or cream route, license required for, 3-24-100
 - notice of intention to revoke, deny or suspend license, 3-24-106
 - plant operator's license required, fee, 3-24-107, 3-24-112.1
 - posting of licenses required, 3-24-101, 3-24-112.1
 - privilege not a right, 3-24-101
 - reinstatement after revocation of license, 3-24-106
 - revocation for deceit in grade, measure or test of milk and cream, 3-24-139
 - revocation, suspension or denial of license, hearings on, 3-2491, 3-24-106
 - tester license required, fee, 3-24-102, 3-24-112.1
 - transfer of licenses prohibited, 3-24-101, 3-24-112.1
- monopoly statutes applicable, 3-24-130
- pasteurization required, 3-24-126
 - equipment used for pasteurization, 3-24-127
 - labeling of pasteurized products, 3-24-128
 - records required, 3-24-127

INDEX

References are to Title and Section numbers

DAIRIES AND DAIRY PRODUCTS (Continued)

- Manufactured dairy products (Continued)
 - penalties for deceit in grade, measure or test of milk and cream, 3-24-139
 - penalty for violation of act or rules, 3-24-137
 - plants for manufacture of dairy products
 - construction, remodeling or relocation of plant, plans to be approved, 3-24-110
 - license required, 3-24-107
 - monthly report of plant operator, 3-24-111
 - producers' names furnished to department, 3-24-108
 - political subdivision, co-operative agreements with, 3-24-115
 - producers of milk and cream, plant operator to furnish names and addresses on request, 3-24-108
 - purchase prices for milk and cream to be posted, 3-24-132
 - records and reports required of dairies and manufacturers, 3-2492
 - availability of records to department, 3-24-116
 - monthly report of plant operator, 3-24-111
 - pasteurizing records, 3-24-127
 - refrigeration required for products, 3-24-117
 - removal from market of product constituting health hazard, 3-24-113
 - rules
 - hearings on proposed changes to rules, 3-2495
 - judicial review of proposed changes, 3-2495
 - notice of proposed new or amended rules, 3-2495
 - violation of rules as misdemeanor, 3-2493
 - samples of products
 - departmental authority to sample and test, 3-24-103
 - evidentiary use of samples, 3-24-109
 - purchasers to take and preserve samples of milk and cream, 3-2499
 - severability of provisions, 3-2494
 - standards for manufactured products, conformity required, 3-24-131
 - standards for milk and cream, adoption by department of livestock, 3-2489
 - conformity to standards required, 3-24-131
 - testing of products
 - departmental authority to test and retest samples, 3-24-103
 - department of health and environmental sciences or approved laboratory, tests by, 3-2498
 - evidentiary use of test results, 3-2498, 3-24-109
 - license required for milk and cream tester, 3-24-102
 - methods used in testing, 3-2498
 - violations of act or rule, penalties for, 3-24-137
- Milk marketing control and regulation
 - assessment upon producer-distributors and distributors, 27-409
 - bonds required of distributors, 27-426
 - construction and application of law, severability, 27-423
 - credit extension to retailers, restrictions on, 27-414.1
 - declaration of policy regulating milk, 27-401
 - definitions, 27-403
 - entry and inspection, powers of, 27-415
 - fair trade practices, rules and regulations governing, 27-414
 - financing of retailer, restrictions on, 27-414.2
 - finances assessed for violations, deposit and use, 27-417
 - general powers of department, 27-405
 - licenses required of producers, distributors and jobbers, 27-408
 - application for license, contents, 27-410
 - assessments against licensees, 27-409
 - civil penalty authorized in lieu of revocation or suspension, 27-411
 - fees for licenses, 27-409
 - suspension, revocation or refusal of license, 27-411
 - milk control board, legal existence, functions, 82A-406
 - jurisdiction over rates among plants, 82A-406.1
 - minimum prices, hearing and procedure for establishment, 27-407
 - natural marketing areas, designation and establishment, hearing, procedure, 27-406

INDEX

References are to Title and Section numbers

DAIRIES AND DAIRY PRODUCTS (Continued)

- Milk marketing control and regulation (Continued)
 - police powers of state invoked, 27-402
 - protection and promotion of public welfare, 27-402
 - records and reports required of licensees, effect of failure to file, 27-416
 - remedies available to department, status of department and board to sue and be sued, 27-424
 - rules and orders, posting, distribution and service of copies, 27-413
 - violation as misdemeanor, penalty, prosecution, 27-422

DAMAGES AND RELIEF

- Measurement of damages, principles applicable under Uniform Commercial Code, 87A-1-106
- Sovereign immunity abolished, 1972 Const., II, 18
- Speedy remedy for every injury of person, property or character, 1972 Const., II, 16
- Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against
- Voluntary partial payment of damage claim, effect, 93-2201-7 to 93-2201-10

DAMS AND RESERVOIRS

- Condemnation of reservoir sites, evidence required, 93-9902
- Construction in thorough, secure and substantial manner required, 89-702 (1)
- Fish and game affected, clearance required, 26-1501 to 26-1507—See FISH AND GAME, Construction projects affecting fish and game
- Floodway management and regulation, 89-3501 to 89-3515—See FLOOD CONTROL AND WATER CONSERVATION
- Inspection and departmental determination of safety of dams, dikes and reservoirs, 89-702, 89-702.1
 - appeal to district court from departmental determination, 89-702.3
 - federal structures exempt, 89-702.2
- Pollution control law, existing dams considered natural condition, 69-4801
- Reservoir water diverted into natural stream, commissioner appointed for equitable distribution to irrigation districts, 89-1001 (6)
- Taxability of facilities, 84-206

DANGEROUS DRUG ACT

See NARCOTIC DRUGS

DAY CARE FACILITIES

- Assistance by state department in meeting standards, 10-809
- Definition of terms, 10-801
- Enforcement powers of state department, 10-811
- Exemption of facilities from regulatory act, 10-801
- Fire safety standards prescribed by department of justice, 10-804
 - waiver of department of justice approval prohibited, 10-807
- Health protection standards prescribed by department of health and environmental sciences, 10-805
 - waiver of departmental approval prohibited, 10-807
- Inspection of facilities by state department, 10-809
- License required for operation, 10-802
 - denial, suspension or revocation of license, grounds, procedure and appeal, 10-810
 - fire safety compliance required for license, 10-804
 - health standards compliance required for license, 10-805
 - investigation of applications for license, 10-806
 - issuance of licenses, 10-806
 - provisional license, issuance, 10-807
 - renewal of license, 10-808
 - standards for license, 10-806
- Municipal day care facilities, tax levy authorized, 10-802.1
- Payments by department of social and rehabilitation services, 10-812
- Records and reports required of facilities, 10-809
- Rules for conduct of facilities, 10-806
- Standards prescribed by state department, 10-803

INDEX

References are to Title and Section numbers

DAY CARE FACILITIES (Continued)

"State department" or "department" defined, 10-801 (4)

Title XX benefits, establishment, collection and deposit of fees for social services, 71-210.4, 71-210.5

Violations of act, investigation and prosecution, 10-811

DEAD ANIMALS

Unlawful disposition, penalty, 69-4518, 69-4519

DEAD BODIES

Anatomical gifts, 69-2315 to 69-2323

Autopsy or dissection, cases in which authorized, 69-5103

mortician authorized to perform acts necessary for burial, 69-5105

penalty for unauthorized autopsy or examination, 69-5106

physician to perform autopsy, 69-5104

report of findings by physician, 69-5104

Burial permit required for disposition or removal, 69-4428

delay in determination of death, issuance of permit pending, 69-4427

importation of body into state, endorsement of permit, 69-4429

Certificate of death, 69-4424 to 69-4428—See VITAL STATISTICS, Death certificate

Coroner, powers and duties, 95-801 to 95-814—See COUNTY CORONER

Disinterment, permit required, procedure, 69-4428.1

Medical use of cadavers authorized, 69-5101

procedure for obtaining cadavers, 69-5102

Occupational Disease Act, autopsies under, 92-1318

DEAF

Occupational deafness, workmen's compensation for, 92-710

Party to legal proceedings, appointment of interpreter required, payment of fee, 93-514

DEATH

Certified or authenticated copy of death certificate as prima facie proof, 91A-1-107 (1)

Devolution of estate at death, restrictions and limitations, 91A-3-101

Fact of death in doubt, procedure for commencement of formal testacy proceedings, 91A-3-403 (2)

alleged decedent found alive after finding fact of death, recovery from distributees, procedure, 91A-3-412 (5)

Heir or devisee failing to survive decedent by one hundred twenty hours, 91A-2-104, 91A-2-601

Official records as prima facie evidence, 91A-1-107

Presumption from continuous absence unheard from, 91A-1-107 (3)

Simultaneous death, 91A-2-104, 91A-2-601
evidence, 91A-1-107

DEATH SENTENCE

Aggravated kidnaping, 94-5-303, 94-5-304

Appeal, stay of execution, 95-2406

Deliberate homicide, 94-5-105

Execution of sentence, procedure, 95-2303

Justification of acts of public servant in execution of sentence, 94-3-109

Mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305

Pregnant female, proceedings, 95-2306, 95-2307

DEATH TAX

See INHERITANCE TAX

DEBT COLLECTION SERVICE

See STATE DEBT COLLECTION SERVICE

INDEX

References are to Title and Section numbers

DEBTOR AND CREDITOR

- Debt adjusters
 - definitions, 18-401
 - exemptions, 18-403
 - prohibition and penalty, 18-402
- Decedents' estates, claims of creditors, 91A-3-801 to 91A-3-816—See DECEDENTS' ESTATES, Creditors' claims
- Delinquent accounts owing state agencies, collection service for, 84-7101 to 84-7111—See STATE DEBT COLLECTION SERVICE
- Imprisonment for debt, 1972 Const., II, 27

DECEDENTS' ESTATES

- Administration and closing of estate, 91A-3-101 to 91A-3-1205—See PROBATE AND ADMINISTRATION PROCEEDINGS
- Compromise of controversies authorized, binding effect, 91A-3-1101
 - procedure for securing court approval of compromise, 91A-3-1102
- Contracts concerning succession, how established, 91A-2-701
- Creditors' claims, 91A-3-801 to 91A-3-816
 - allowance of claims generally, 91A-3-806
 - disallowance of claim, notice, procedure, 91A-3-806
 - failure of personal representative to timely mail notice to claimant as disallowance of claim, 91A-3-806 (1)
 - judicial allowance, 91A-3-806 (2) to (4)
 - appointment of personal representative required for enforcement of claim, 91A-3-104—See PERSONAL REPRESENTATIVES
 - assertion in subsequent administration of claim previously barred prohibited, 91A-3-1009
 - assets in state subject to all claims, allowances and charges, 91A-3-815
 - claims not due, 91A-3-810
 - compromise of claim, when authorized, 91A-3-813
 - contingent or unliquidated claims, 91A-3-810
 - counterclaim deducted from amount of creditor's claim, 91A-3-811
 - disallowance of claim, notice to claimant, judicial hearing, 91A-3-806
 - district judge as claimant, procedure, 91-2706
 - executions against estate prohibited, 91A-3-812
 - judicial proceedings, time limit, 91A-3-804 (2)
 - mortgages, pledges or liens enforceable, 91A-3-812
 - payment by personal representative, share of distributee not increased by, 91A-3-814
 - notice to creditors required, contents, publication, 91A-3-801
 - payment less than nominal value of claim, credit allowed for amount actually paid, 91-3406
 - payment of claims, personal liability of personal representative, 91A-3-807
 - payment of debt to stop running of interest, 91-2725
 - preference in payment of claims of same class prohibited, 91A-3-805
 - presentation of claim, contents of statement, procedure, 91A-3-804
 - priority and classification of claims, 91A-3-805
 - wage claims against decedent as preferred claims, 45-603
 - secured claims, bases for payment of, 91A-3-809
 - settlement for less than nominal value, credit allowed, 91-3406
 - statute of limitations, claims barred by, waiver, 91A-3-802
 - time limit for presentation of claim, 91A-3-801, 91A-3-803
- Devolution of estate at death, 91A-3-101
- Distribution of estate, 91A-3-901 to 91A-3-916
 - abatement of devises in favor of prior claims, order of abatement, 91A-3-902
 - alteration of rights by private agreement among successors binding on personal representative, 91A-3-912
 - escheat of unclaimed assets, 91A-3-914—See Escheated estates, below
 - in kind distribution, valuation of assets, method, notice, objections, 91A-3-906
 - improper distribution, liability of distributee, 91A-3-909
 - instrument or deed executed by personal representative as evidence of right or title of distributee, 91A-3-907, 91A-3-908
 - purchaser from distributee protected, 91A-3-910
 - interest payable on general pecuniary devise, 91A-3-904

INDEX

References are to Title and Section numbers

DECEDENTS' ESTATES (Continued)

Distribution of estate (Continued)

- no administration, rights of successors, proof, 91A-3-901
 - nonresident estate, final distribution to domiciliary personal representative, 91A-3-816
 - offset of successor's indebtedness against distributive share, 91A-3-903
 - person under legal disability as distributee, procedure for distribution to, 91A-3-915
 - trustee of testamentary trust as successor entitled to distribution, 91A-3-912
 - distribution to trustee, requirements imposed by personal representative, 91A-3-913
 - unclaimed assets, disposition of, 91A-3-914
 - undivided interest, partition among two or more heirs or devisees, 91A-3-911
- Elective share of surviving spouse, 91A-2-201 to 91A-2-207
- amount of elective share, determination, 91A-2-205
 - charging spouse with property received, liability for balance apportioned to others, 91A-2-207
 - exercise of right personal to surviving spouse, exception, 91A-2-203
 - homicide on decedent as barring benefits, 91A-2-803
 - procedure for making election, notice, time limitation, 91A-2-205
 - rejection of benefits under will or intestate succession, effect, 91A-2-206
 - right to elective share of augmented estate, 91A-2-201
 - "augmented estate" defined, 91A-2-202
 - share of surviving spouse in estate unaffected by election, 91A-2-206
 - status as surviving spouse, effect of divorce, annulment or separation, 91A-2-802
 - waiver of right by agreement, 91A-2-204

Escheated estates

- attorney general's duties, expense, 91-512
- deposit of money and property in agency fund, 91-502, 91-523
- holding by state treasurer subject to claims, period, 91-502
- investment of moneys pending proceedings, 91-504
- sale of property
 - agent, property held by, 91-507
 - department of revenue, sales by, how conducted, 91-508
 - order of sale by court, 91-504
 - personal property, manner of sale, 91-505
 - real property, manner of sale, 91-506
- survival statute inapplicable to create escheat, 91A-2-104
- unclaimed assets of estate, 91-526, 91A-3-914

Estate tax apportioned among persons interested in the estate, procedure, 91A-3-916—

See also INHERITANCE TAX

- action to recover tax apportioned, 91A-3-916 (7)
- "estate" defined, 91A-3-916 (1) (a)
- "person interested in the estate" defined, 91A-3-916 (1) (c)
- "tax" defined, 91A-3-916 (1) (e)
- temporary interest and remainder, tax charged to corpus without apportionment, 91A-3-916 (6)
- withholding of tax by personal representative, collection of deficiency, 91A-3-916 (4) (a)

Exempt property of surviving spouse and children, 91A-2-402

- additional to other benefits or shares of surviving spouse or children, 91A-2-402
- augmented estate reduced by amount of allowance, 91A-2-202
- homicide on decedent as barring benefits, 91A-2-803
- inheritance tax, allowance included in computing exemptions from, 91A-2-405
- priority over other claims, 91A-2-402
- selection of property by surviving spouse or children, 91A-2-404
- status as surviving spouse, effect of divorce, annulment or decree of separation, 91A-2-802
- waiver of right by agreement, 91A-2-204

Family allowance to surviving spouse and children, 91A-2-403

- deducted in computing augmented estate, 91A-2-202
- determination of amount, payment, 91A-2-404
- exemption and priority of allowance, 91A-2-403

INDEX

References are to Title and Section numbers

DECEDENTS' ESTATES (Continued)

Family allowance to surviving spouse and children (Continued)

- homicide on decedent as barring allowance, 91A-2-803

- inheritance tax, allowance excluded in computing exemptions from, 91A-2-405—

- See INHERITANCE TAX

- status as surviving spouse, effect of divorce, annulment or separation, 91A-2-802

- waiver by agreement, 91A-2-204

Homestead allowance of surviving spouse and children, 91A-2-401—See also HOME-STEADS, in bound volume index

- additional to share otherwise passing, 91A-2-401 (1)

- augmented estate reduced by amount of allowance, 91A-2-202

- homicide on decedent as barring allowance, 91A-2-803

- inheritance tax, allowance not included in computing exemptions from, 91A-2-405—See INHERITANCE TAX

- selection, designation and setting apart by personal representative, 91A-2-401

- selection of property by surviving spouse or children, 91A-2-404

- status as surviving spouse, effect of divorce, annulment or separation, 91A-2-802

- waiver of allowance by agreement, 91A-2-204

Inheritance, estate or death taxes, lien of state follows property sold or distributed, 91A-3-1010

Intestate succession, 91A-2-101 to 91A-2-112

- adjudication of intestacy, petition for, procedure, 91A-3-402 (2)

- adopted child as heir of adopting parent, 91A-2-109 (1)

- afterborn heirs inherit as though born in decedent's lifetime, 91A-2-108

- alien as heir, qualifications, 91A-2-111

- child born out of wedlock, status as heir, 91A-2-109 (2)

- children of decedent, distributive shares, 91A-2-103

- issue of deceased child, distributive share, 91A-2-103, 91A-2-106

- meaning of "child" and related terms, 91A-2-109

- pretermitted children, 91A-2-302

- contract to die intestate, how established, 91A-2-701

- dower and curtesy abolished, 91A-2-112

- escheat to state, 91A-2-105—See Escheated estates, above

- half blood relative share, 91A-2-107

- "heirs" defined, 91A-1-201 (18)

- heirs other than surviving spouse, distributive shares, 91A-2-103

- heir surviving decedent for one hundred twenty hours required, 91A-2-104

- homicide on decedent as barring benefits, 91A-2-803

- inter vivos gift not advancement against share of heir unless so designated, 91A-2-110

- intestate estate passes to heirs, 91A-2-101

- renunciation of interest by heir, procedure and formal requirements, 91A-2-801

- representation, succession by, 91A-2-106

- spouse and children omitted from will, 91A-2-301, 91A-2-302

- spouse surviving, distributive share, 91A-2-102

- dower and curtesy abolished, 91A-2-112

- elective share of surviving spouse, 91A-2-201 to 91A-2-207—See Elective share of spouse, above

- exempt property, 91A-2-402—See Exempt property, above

- family allowance, 91A-2-403—See Family allowance, above

- homestead allowance, 91A-2-401—See Homestead allowance, above

- no surviving spouse, distribution, 91A-2-103

- omitted from will, distributive share, 91A-2-301

- status as surviving spouse, effect of divorce, annulment or separation, 91A-2-802

Newly discovered estate property, administration after closing of original proceedings, 91A-3-1009

Nonresident decedents, 91A-4-101 to 91A-4-303

- ancillary and other local administrations governed by code provisions, 91A-4-209

- definition of terms, 91A-4-101

- informal probate, application for, contents, 91A-3-301

- inheritance tax determined by department of revenue, 91A-4-202

- bond posted by foreign personal representative, certificate of sufficiency by department, 91A-4-202

INDEX

References are to Title and Section numbers

DECEDENTS' ESTATES (Continued)

Nonresident decedents (Continued)

inheritance tax determined by department of revenue (Continued)

certificate of department of revenue that tax paid or not owing, copy to clerk of court, 91A-4-202 (2)

notice to domiciliary foreign personal representative and clerk of court of tax due, 91A-4-202 (1)

waiver of tax by department, 91A-4-202 (3)

inspection of estate assets by foreign personal representative authorized, 91A-4-203

inventory, appraisal and affidavit, filing, copies to department of revenue, 91A-4-201 (3)

jurisdiction over foreign personal representative, 91A-4-301 to 91A-4-303

application for appointment, contents, 91A-3-301

effect of adjudications, 91A-4-401

jurisdiction over decedent as conferring jurisdiction over personal representative, 91A-4-302

service of process on personal representative, 91A-4-303

submission to jurisdiction by foreign personal representative, 91A-4-301

money and property delivered to foreign personal representative, when authorized, 91A-4-204

order of court authorizing payment or delivery, 91A-4-206 (2)

release of debtor or person having possession, effect of notice by resident creditor, 91A-4-206 (1)

possession taken of assets within state by foreign personal representative, documents required to be filed, contents, 91A-4-201, 91A-4-207

"foreign personal representative" defined, 91A-1-201

powers of foreign personal representative, 91A-4-207

special administrator, foreign personal representative exercising powers of, 91A-4-202 (2)

"local administration" defined, 91A-4-101 (1)

termination of power upon application or petition for local administration, exception, 91A-4-208

Penalty clause for contesting will or instituting proceedings unenforceable if probable cause exists, 91A-3-905

Personal representative, appointment, control of estate, 91A-3-601 to 91A-3-618—See PERSONAL REPRESENTATIVES

Power of attorney not revoked until notice of death of principal, 91A-5-502

Pretermitted children, provisions for, 91A-2-302

Sale of estate property prohibited without delivery of inventory and statement of value to department of revenue, exception, 91A-3-715.1

Small estates, 91A-3-1201 to 91A-3-1204

successor's affidavit for transfer of property, contents, 91A-3-1201

effect of affidavit, 91A-3-1202

person having superior right, recovery from transferee, 91A-3-1202

refusal to deliver property, action or proceeding for recovery of, 91A-3-1202

summary closing by sworn statement of personal representative, 91A-3-1203, 91A-3-1204

contents of statement, 91A-3-1204

effect of statement, 91A-3-1204 (3)

Treason conviction not cause for loss of property to relatives or heirs of convicted, 1972 Const., II, 30

Wills, 91A-2-501 to 91A-2-902—See WILLS

DECEPTIVE PRACTICES

See FALSE PRETENSES

Acts constituting criminal offense, punishment, 94-6-307

Adulterated commodities, selling or exposing for sale, punishment, 94-6-308
"adulterated" defined, 94-6-308 (2)

Business practices constituting criminal offenses, punishment, 94-6-308

"Deception" defined, 94-2-101 (11)

False advertising, punishment, 94-6-308

INDEX

References are to Title and Section numbers

DECEPTIVE PRACTICES (Continued)

- False weight or measure, use or possession as deceptive business practice, punishment, 94-6-308
- Mislabeled commodities, selling or exposing for sale, punishment, 94-6-308
 - "mislabeled" defined, 94-6-308 (3)
- Sale or delivery of less than represented quantity, punishment, 94-6-308
- Taking more than represented quantity, buyer furnishing weight or measure, punishment, 94-6-308

DECLARATORY JUDGMENT

- Action for declaratory judgment, M. R. Civ. P., Rule 57
- Rule of administrative agency, action for judgment on validity of, 82-4219

DEEDS AND CONVEYANCES

- Abstracts recordable, 73-101.1
 - effect of recording, 73-201.1
- Causing execution of conveyance by deception or threat as deceptive practice, punishment, 94-6-307
- Joint tenancy in real property created by direct conveyance, 67-1602.1
- Married person
 - conveyance of individual property without consent or signature of spouse, 36-111
 - validity of conveyance and acknowledgment, 39-108, 39-109
- Recording as notice as to property acquired after conveyance, 73-201
- Unit ownership property, contents of deed, 67-2322
- Validation of county dispositions of property, 16-1510 to 16-1514
- Validation of defectively executed instruments, 73-207 to 73-212
- Validation of fiduciary sales, 91-4324 et seq.
- Validation of recorded judgment or decree affecting realty, 93-5710.1 et seq.
- Validation of unacknowledged instruments, 39-135 to 39-139

DEFAULT JUDGMENT

See JUDGMENTS, Default judgment, M. R. Civ. P., Rule 55

DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

- Contracts for services with private corporations or institutions authorized, 68-2703
- Department of administration or appropriate designated officer authorized to contract with employee, 68-2702
 - co-ordination of program under department or designated officer, 68-2703
 - rules and regulations established by department, 68-2702
- "Employee" defined, 68-2704
- Establishment by agreement with employee authorized, 68-2701
- Establishment of plans with authorized companies, trusts or agents as intent of legislature, 68-2708
- Exemption of plan under Internal Revenue Code required, 68-2701
- Internal Revenue Code limitations applicable, 68-2701
- Maximum deferral limited by Internal Revenue Code, 68-2601
- Payments to qualified plans authorized, 68-2705
- Payroll deductions authorized, 68-2703
- Public entities immune from financial liability, 68-2707
- Retirement programs unaffected, 68-2706
- Severability of provisions, 68-2709
- State and political subdivisions authorized to establish plan, 68-2701

DEMURRER

- Abolition in civil cases, M. R. Civ. P., Rule 7(c)
- Abolition in justices' courts, 93-6802.2

DENTISTRY

- Acupuncture, license required for practice of, 66-3401 to 66-3417—See ACUPUNCTURE
- Annual renewal of license, fee, 66-906

INDEX

References are to Title and Section numbers

DENTISTRY (Continued)

Board of dentists

- administrative services provided by department, 82A-1603
- allocation to department for administrative purposes, 82A-1602
- appointment, qualifications and terms of members, 82-1602.9
- compensation of members, 66-909
- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.9
- expenses of members, reimbursement, 66-909
- legal assistance in hearings by board, 82A-1604
- meetings of board, 66-904
- moneys received by board, deposit and use, 66-904, 66-909
 - emergency fund authorized, expenditures from, 66-909 (3)
- national association affiliation authorized, expense allowances of delegate to meetings, 66-920
- removal of member for neglect or cause, 82A-1602.9 (3)
- report to governor, 66-904
- retention of functions by board, 82A-1605
- rules as to auxiliary personnel, 66-923.1
- secretary-treasurer of board, duties and accounts, 66-904

Certificate to practice, filing with county recorder, 66-906

Citation of regulatory act, 66-925

Corporations for practice of dentistry, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS

Definition of terms, 66-901.1

Drug trade prohibited to practitioners, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners

Injunction to prevent unauthorized practice, 66-911

Laboratories and technicians

- advertising to general public prohibited, 66-910
- work authorization to be given by dentist, 66-910

Malpractice, statute of limitations, 93-2624

National board of examiners certificate, recognition, 66-905

Penalties for practice without certificate, 66-919

Prosecution of violations, employment of special counsel for, 66-909

DEPARTMENT OF ADMINISTRATION

Building programs

- architects and consulting engineers, appointment, 82-3319
 - restrictions on architectural work by state, 82-3320
- buildings subject to control, 82-3314
- definition of terms, 82-3314
- emergency repairs and operations authorized by governor, 82-3316
- legislative consent, when required for construction, 82-3316
- pecuniary interest prohibited to public officers and employees, 82-3321
- powers and duties of department generally, 82-3318
- rental contracts with option to purchase authorized, vote in legislative assembly required, 82-3315.1
 - appointment of architect, approval of board required, 82-3315.4
 - awarding of contract, procedure, 82-3315.7
 - compliance with state laws and building codes required, 82-3315.8
 - contract involving sale or lease of state lands, approval of board of land commissioners required, 82-3315.2
 - location of building, 82-3315.2
 - maximum purchase balance at end of contract, 82-3315.5
 - maximum term of contract, 82-3315.5
 - payment of rent, pledge of security, 82-3315.3
 - sources of funds, 82-3315.6
 - provisions of contract generally, 82-3315.5
- submission of programs to department, governor and legislative assembly, 82-3315
- supervision of construction by department, 82-3317
- university buildings, authority of regents and governor, 82-3316

INDEX

References are to Title and Section numbers

DEPARTMENT OF ADMINISTRATION (Continued)

- Capitol buildings and grounds, oversight and supervision by department, 82-3309, 82-3310
- Communications powers and duties of department, 82-3325
 - advisory council on communications, 82-3326
 - centralized equipment maintenance program authorized, 82-3325 (5)
 - credit account established to defray cost of maintenance and repair, 82-3325.1
 - employees transferred, rights and privileges unaffected, 82-3325.2
 - transfer of funds, equipment, facilities and employees, 82-3325.1
 - co-operation with other government agencies, 82-3330
 - cost and other factors considered in decisions, 82-3329
 - law enforcement communication system exempt, 82-3331
- Creation of department, director as head, 82A-201
 - units comprising department, 82A-204 to 82A-223—See REORGANIZATION OF STATE GOVERNMENT, Department of administration
- Data processing, computer, duplicating, copying, and automatic typing facilities, maintenance for state agencies, 82-3306
- Fiscal responsibilities of department, 82-108.1 to 82-111—See PUBLIC FINANCE, State finance
- Functions of department, 82A-201.1
- Mailing facilities, maintenance for state agencies, 82-3306
- Office space, assignment to state agencies, 82-3308
- Purchasing functions, 82-1901.1 to 82-1937—See STATE PURCHASES
- Records management program, 82-3311
 - definition of "records," 82-3312
 - destruction of records, procedure for authorization, 82-3313
 - library and museum material excluded from program, 82-3312
- Reorganized department, 82A-201.1 to 82A-223—See REORGANIZATION OF STATE GOVERNMENT, Department of administration
- Supreme Court reports, printing and publication, 82-2002
- Telephone switchboard, maintenance for state agencies, 82-3307

DEPARTMENT OF AGRICULTURE

See AGRICULTURE, Department of agriculture

DEPARTMENT OF BUSINESS REGULATION

- Board of milk control functions, 82A-406, 82A-406.1
- Board of trade functions, 82A-404
- Director as head of department, 82A-401
- Functions of department, 82A-401.1
- Legal existence of department, 82A-401
- State banking board, composition and appointment of members, terms, 82A-407
 - allocated to department for administrative purposes only, 82A-407 (4)

DEPARTMENT OF COMMUNITY AFFAIRS

- Annual audit of governmental entities, 82-4515 to 82-4530
 - access of department to cash and accounts of public entity, 82-4526
 - refusal to accord access, suspension of official, 82-4526 (1)
 - accounting methods prescribed by department, 82-4530
 - audit reports, 82-4520 to 82-4523
 - contents of report, 82-4520
 - deficiencies or recommendations contained in report, duty of public entity, 82-4522
 - filing of report, public inspection authorized, 82-4521 (3)
 - persons to whom audit report issued, 82-4521 (1)
 - publication of general comments contained in report, statements included in publication, 82-4523
 - violation of law or duty disclosed, procedure, 82-4521 (2)
 - conference on audit results held by auditor in charge with appropriate officials, 82-4519
 - entities subject to audit, 82-4516
 - examination of persons, books and records by department, 82-4528

INDEX

References are to Title and Section numbers

DEPARTMENT OF COMMUNITY AFFAIRS (Continued)

Annual audit of governmental entities (Continued)

fees for audit, 82-4524

initiation and scope of audit, 82-4516 (2), (3)

officers and employees to co-operate, 82-4527

public accountant audit in lieu of departmental audit, when authorized, 82-4516 (4), 82-4525

purpose of audit, 82-4517

quo warranto available to official, 82-4526 (3)

scope of audit, standards, 82-4516 (2), 82-4518

shortage disclosed, forfeiture of office, procedure, 82-4526

special audits, power of department, fee, 82-4529

Board of aeronautics allocated to department and designated quasi-judicial board, 82A-905—See AERONAUTICS, Board of aeronautics

Board of county printing, composition and functions, 82A-904

Board of housing, legal existence, composition, allocation, designation, 82A-907

Board of cities and towns, duties, 11-1411

copy of budget filed with department, penalty for failure, 11-1406

financial statement of city or town, copy filed with department, 11-806

Creation of department, 82A-901

Director as head of department, 82A-901

Functions and responsibilities of department, 82A-901.1

Planning and economic development functions of department, 82-3701 to 82-3710—
See PLANNING AND ECONOMIC DEVELOPMENT

Police department reserve fund, duties of department concerning actuarial valuation, 11-1829

Powers and duties of department pertaining to aeronautics, 1-101 to 1-502, 1-818, 1-901 to 1-927—See AERONAUTICS, Department of community affairs

Special audits, 82-4529

State airplanes, departmental control, 1-1101 to 1-1105—See AERONAUTICS, State airplanes

DEPARTMENT OF EDUCATION

See STATE BOARD OF EDUCATION

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

See STATE BOARD OF HEALTH, Permanent volume

Air pollution control advisory council, existence and composition, appointment, qualifications and tenure of members, 82A-606—See AIR POLLUTION CONTROL

compensation of members, 82A-110 (5)

meetings, 82A-110 (6) (7)

officers, election, 82A-110 (6)

quorum, 82A-110

Board of health and environmental sciences, legal existence, composition, 82A-605
allocation to department for administrative purposes, 82A-612 (4)

bylaws, adoption authorized, 69-4104 (1)

designation as quasi-judicial board, 82A-605 (3)

director as secretary of board, 69-4104 (1)

functions, powers and duties of board, 69-4106

legal advisers to board, 69-4111

meetings of board, member absences as vacating office, 69-4104 (2) (3)

Board of water and waste water operators created, composition, appointment, qualifications and terms of members, 82A-612

Change of names of departmental entities, 82A-613 to 82A-620

Clean Air Act, administration, 69-3904 to 69-3923—See AIR POLLUTION CONTROL

Comprehensive state health planning powers, 69-4110.1

Definition of terms, 69-4102

INDEX

References are to Title and Section numbers

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES (Continued)

- Director as head of department, 82A-601
 - appointment by governor, 82A-106, 82A-601
 - qualifications of director, 82A-608
- Division of environmental sciences within department, 82A-604
 - enumeration of functions transferred by department to division, 82A-604
- Food, Drug and Cosmetic Act, enforcement, 27-701 to 27-723—See FOOD AND DRUGS, Food, Drug and Cosmetic Act
- Food service establishments, licensing and regulation, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
- Functions of department, 82A-601.1
 - enumeration of functions assigned by department to division of environmental sciences, 82A-604
- Hospital survey and construction, administrative duties of department, 69-5303, 82A-601.1—See HOSPITALS AND RELATED FACILITIES, Survey and construction of hospitals
- Information furnished by private and public officials and employees, 69-4114
- Inspection and correction of conditions in public buildings, 69-4118
- Legal advisers to board and department, 69-4111
- Legal existence of department, 82A-601
- Local boards, general supervision by department, 69-4502
- Occupational health, administrative duties, 69-4209 — See OCCUPATIONAL HEALTH
- Powers, duties and functions of department, 69-4110
- Public health functions of department enumerated, 82A-601.1
- Reorganization of former department of health as department of health and environmental sciences, 82A-601 to 82A-620—See REORGANIZATION OF STATE GOVERNMENT, Department of health and environmental sciences
- Venereal disease, departmental functions with respect to, 69-4602—See VENEREAL DISEASE
- Vital statistics, departmental functions with respect to, 69-4403—See VITAL STATISTICS
- Water pollution control advisory council, existence and composition, appointment, qualifications and tenure of members, 82A-607—See WATER POLLUTION CONTROL
 - compensation and expenses of members, 82A-110 (5)
 - meetings of council, 82A-110 (7)
 - officers, election, 82A-110 (6)
 - quorum for transaction of business, 82A-110 (8)

DEPARTMENT OF HIGHWAYS

See HIGHWAYS, BRIDGES AND FERRIES; REORGANIZATION OF STATE GOVERNMENT, Department of highways

DEPARTMENT OF INSTITUTIONS

See STATE INSTITUTIONS, Department of institutions

DEPARTMENT OF JUSTICE

- Board of crime control continued in department, functions, 82A-1207
- Creation of department, 82A-1201
- Division of motor vehicles, creation, 82A-1204
 - functions of division, 82A-1205, 82A-1206
- Functions of department, 82A-1202, 82A-1203
 - electrical inspection and code making functions transferred, 82A-1607
- Head of department, 82A-1201

DEPARTMENT OF LABOR AND INDUSTRY

See REORGANIZATION OF STATE GOVERNMENT, Department of labor and industry

DEPARTMENT OF LIVESTOCK

See LIVESTOCK, Department of livestock

INDEX

References are to Title and Section numbers

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

- Board of natural resources and conservation, existence and composition, 82A-1509
 - advisory capacity to department, 82A-1509 (5)
 - allocation to department for administrative purposes, 82A-1509 (4)
 - designated as quasi-judicial board, 82A-1509
- Board of oil and gas conservation, existence and composition, 82A-1508
 - allocated to department for administrative purposes, authority to hire personnel retained, 82A-1508 (3)
 - designation as quasi-judicial board, 82A-1508 (4)
- Director as head of department, appointment, 82A-1501
- Functions and responsibilities of department, 82A-1501.1

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

- Agencies allocated to department, 82A-1602
- Creation of department, 82A-1601
- Director as head of department 82A-1601
 - duties of director, 82A-1604
- Duties of department, 82A-1603
- Employment of personnel for agencies, 82A-1604
- Functions retained by agencies, 82A-1605
- Legal assistance provided agencies, 82A-1604
- Membership of boards continued, exception, 82A-1606

DEPARTMENT OF PUBLIC SERVICE REGULATION

See PUBLIC SERVICE COMMISSION; REORGANIZATION OF STATE GOVERNMENT

DEPARTMENT OF REVENUE

- Collection service for debts owing state agencies, 84-7101 to 84-7111—See STATE DEBT COLLECTION SERVICE
- Director of revenue as head of department, 82A-1801
 - chief administrative officer of department, 82A-1804
 - creation of office, appointment, 82A-1804
- Liquor control board abolished, functions transferred to department, 82A-1807
 - license decisions of department, appeal to state tax appeal board, 82A-1808
- Multistate tax compact advisory committee abolished, 82A-1806
 - advisory council appointed by board, 82A-1803
- Rural co-operative tax functions transferred to department, 82A-1802

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

See REORGANIZATION OF STATE GOVERNMENT

DEPARTMENTS OF GOVERNMENT—See REORGANIZATION OF STATE GOVERNMENT; STATE DEPARTMENTS AND BOARDS

DEPENDENTS

- Nonsupport as criminal offense, punishment, 94-5-608
 - aggravated nonsupport, elements of offense, punishment, 94-5-608 (2) (3)
 - finances and forfeitures for benefit of dependent, authority of court, 94-5-608 (4)

DEPOSIT

- Security deposits of residential tenants, 42-301 to 42-309—See LANDLORD AND TENANT, Security deposits
- Storage deposits, applicability of Uniform Commercial Code to, 20-314

DEPOSITIONS

- Criminal procedure, 95-1802
- Depositions to be taken in other jurisdictions for use in Montana, subpoena authorized, M. R. Civ. P., Rule 32(e)
- Errors in depositions, effect, M. R. Civ. P., Rule 32
- Irregularities in depositions, effect, M. R. Civ. P., Rule 32
- Justices' courts, 93-7712
- Oral examination, manner of taking deposition, M. R. Civ. P., Rule 30

INDEX

References are to Title and Section numbers

DEPOSITIONS (Continued)

- Pending action, scope and procedure for depositions, M. R. Civ. P., Rule 26
- Pending appeal, procedure for perpetuation of testimony, M. R. Civ. P., Rule 27(b)
- Perpetuation of testimony before action, M. R. Civ. P., Rule 27(a)
- Persons authorized to take depositions, M. R. Civ. P., Rule 28
- Stipulations to govern taking of depositions, M. R. Civ. P., Rule 29
- Subpoena for taking of depositions, M. R. Civ. P., Rule 45(d)
- Written interrogatories, manner of taking depositions, M. R. Civ. P., Rule 31

DEPOSITORIES OF PUBLIC FUNDS

- Building and loan associations and savings and loan associations as eligible depositories, 16-2618, 79-301, 79-306
- City and town funds, 16-2618
- County funds, 16-2618
- County funds, examination of books and counting of money by department, county clerk or county commissioners, 16-2625
- Savings and loan associations and building and loan associations as qualified depositories, security required, 16-2618
 - demand deposits placed only in banks, 16-2618 (4) (a)
- School districts, short-term investments in time deposits in qualified depositories, 16-2618 (8)
- Securities acceptable as security for deposits, 79-307
 - housing authority bonds, 35-145
- State agencies and institutions, eligible depositories, 79-306
- State funds, eligible depositories, security required, 79-301—See PUBLIC FINANCE, State finance

DEPOSITS IN COURT

- Statutes govern deposits, M. R. Civ. P., Rule 67
- Unclaimed deposit presumed abandoned, 67-2208—See PROPERTY, Unclaimed property

DESTRUCTIVE DEVICES

- Possession in public place with felonious intent as felony, penalty, 69-1932
- definition, 69-1931

DEVELOPMENTAL DISABILITY

- Advisory council appointed by governor, composition, duties, 71-2406
 - authority for appointment, 82A-110
- Boulder river school and hospital, transfer of appropriated funds to and from, 71-2414
- Care and treatment of developmentally disabled persons, 38-1201 to 38-1233—See DEVELOPMENTALLY DISABLED PERSONS
- “Comprehensive developmental disability system” defined, basic services, 71-2402 (4)
- Counties and municipalities contributing to facilities within or without jurisdiction, 71-2408
- Definition of terms, 71-2402
- Departmental responsibilities, 71-2403
 - community comprehensive services, clinics or other facilities, establishment and administration of, 71-2405
 - conformity to plans of advisory council and regional councils, 71-2405 (2)
 - “department” defined, 71-2402 (1)
 - federal guidelines to be observed, 71-2404
 - rules adopted for control of programs, 71-2404
 - standards for facilities, 71-2404
- Department of institutions, transfer of appropriated funds to and from, 71-2414
- Departments and agencies to co-operate in programs, 71-2418
- Developmentally disabled persons, protective services for, 71-1901 to 71-1913—See PUBLIC WELFARE, Developmentally disabled persons
 - community homes for training and treatment, 71-2001 to 71-2007
- Existing facilities unaffected, 71-2411

INDEX

References are to Title and Section numbers

DEVELOPMENTAL DISABILITY (Continued)

- Persons eligible for services, 71-2409
 - discrimination prohibited, 71-2412
 - reservation Indians eligible, 71-2410
- Regional councils, creation, approval by department, 71-2407
 - counties comprising regions, 71-2407
 - duties of councils, 71-2407 (5)
 - expenses of members, reimbursement, 71-2407 (4)
 - qualifications of council members, 71-2407 (2)
- Severability of provisions, 71-2413

DEVELOPMENTALLY DISABLED PERSONS

- Admission of subject to residential facility, 38-1209
 - behavior modification programs, informed consent required, limitations, 38-1227 (3) to (5)
 - community-based facility, transfer of subject to, notice, hearing, procedure, 38-1209 (3)
 - emergency transfer, procedure, 38-1209 (3)
 - electric shock devices, limitations upon use of, 38-1227 (6)
 - emergency admission, criteria for, time limitation, procedure, 38-1216
 - evaluation of residents, time limitation, 38-1230
 - experimental research on resident, informed consent required, restrictions, 38-1228
 - extension of admission period upon recommendation of professional person, notice, hearing, procedure, 38-1209 (4), (5)
 - fingerprinting of subject prohibited unless required by other provisions of law, 38-1219
 - guardian, appointment authorized, 38-1209 (1)
 - institution to meet standards prescribed by act, 38-1231
 - legal rights of subject, withholding upon order of court, restoration, 38-1217
 - maximum period to be specified in court order, limit, 38-1209 (2)
 - medication, regulation of, 38-1226
 - mental disabilities board of visitors, appointment, review by, 38-1232
 - mental health facility patients, transfer to residential facility, 38-1233
 - mistreatment, neglect or abuse of resident prohibited, violation reported, procedure, 38-1225
 - period of admission limited without court approval, 38-1209 (1)
 - photographing of subject, purposes for which permitted, 38-1220
 - physical restraint, when permitted, 38-1227
 - placement in federal or out-of-state facility, 38-1218
 - records required of facility, 38-1223
 - resident labor, rules governing, 38-1229
 - rights of subject while in residential facility, 38-1221, 38-1222
 - seclusion of resident, purposes for which employed, 38-1227 (3)
 - unusual or hazardous treatment prohibited without informed consent, 38-1227
- Compulsory treatment of adult prohibited, exception, 38-1215
- Definition of terms, 38-1202
- "Developmentally disabled" defined, 38-1202 (4)
- Hearings to be held in district court where respondent undergoing treatment, 38-1210
 - appeal to supreme court, 38-1211
 - choice of professional person, right of respondent, parent or guardian, 38-1212
 - costs borne by county of respondent's residence, 38-1210
 - professional person to attend hearings, 38-1213
 - social summary, authority of court to request, 38-1214
- Judicial determination of developmental disability, 38-1205
 - appointment of responsible person to represent respondent authorized, 38-1205 (3)
 - "responsible person" defined, 38-1202 (11)
 - contact by professional person of subject, parent or guardian, 38-1205 (1)
 - cost of hearing borne by county of respondent's residence, 38-1210
 - dismissal of petition upon determination of professional person, 38-1206
 - examination of respondent by professional person upon order of court, 38-1205 (3)
 - explanation of professional person before making examination, 38-1205 (4)
 - notice of petition and finding of probable cause mailed or delivered to respondent and to other interested persons, 38-1205 (3)

INDEX

References are to Title and Section numbers

DEVELOPMENTALLY DISABLED PERSONS (Continued)

Judicial determination of developmental disability (Continued)

- order of court for evaluation and treatment, time limitation, 38-1206 (4)
- petition of county attorney, contents, filing, presentation to court, 38-1205 (1) to (3)
- preliminary report to professional person, 38-1205 (1)
- probable cause determination by court, 38-1205 (3)
- report of professional person and recommendations for evaluation and treatment, 38-1206 (1)
 - hearing requested on recommendations, procedure, 38-1206 (2), (4)
 - venue of hearings, 38-1210

Mental disabilities board of visitors, appointment, duties, 38-1232

Protective services for developmentally disabled persons, 71-1901 to 71-1913—See PUBLIC WELFARE, Developmentally disabled persons

community homes for training and treatment, 71-2001 to 71-2007

Purpose of act, 38-1201

Recommendation for treatment and habilitation by professional person, 38-1207, 38-1208

- community level treatment, report, hearing, procedure, 38-1207
- residential facility recommendation, report, hearing, procedure, 38-1208
- “residential facility” defined, 38-1202 (9)

Resident care workers, training for, 38-1224

Rights of person alleged to be developmentally disabled, 38-1203

- assistance of professional person upon request, 38-1204
- least restrictive means of evaluating and treating to be employed, 38-1204 (2)
- “professional person” defined, 38-1202 (7)
- residential facility, when employed, time limitation, 38-1204
- behavior modification programs, restrictions on, 38-1227 (4), (5)
- choice of professional person, 38-1212
- electric shock devices, when employment authorized, 38-1227 (6)
- experimental research on subject prohibited without express and informed consent, 38-1228
- fingerprinting prohibited, exception, 38-1219
- freedom from mistreatment, neglect or abuse, 38-1225
- hazardous treatment prohibited without consent, 38-1227
- hearing on recommendation of professional person for evaluation and treatment, 38-1206 (2)
 - counsel appointed for indigent respondent, parents or guardian, separate attorneys required, 38-1206 (3), 38-1208
- legal rights not forfeited upon admission to residential facility, exception, 38-1217
- notice of judicial proceedings, 38-1205
- photographs, when permitted, confidentiality, 38-1220
- physical restraint, when permitted, 38-1227 (2)
- residential facility, rights of subject while in, 38-1221, 38-1222
- resident labor, rules governing, 38-1229
- seclusion for nontherapeutic purposes prohibited, when “time out” procedures permitted, 38-1227 (3)
- unnecessary or excessive medication prohibited, records required, review, 38-1226
- waiver, certain rights not subject to, 38-1203

DEVELOPMENT CREDIT CORPORATION ACT

Annual statement, 15-2614

Articles of incorporation, 15-2603

amendment, 15-2605

Board of directors, 15-2606

Capital stock, 15-2603

Certificate of incorporation, 15-2604

Corporation law, applicability of, 15-2618

Credit of state not pledged, 15-2617

Definitions, 15-2602

Deposit of funds, 15-2613

Deposits, receipt of, prohibited, 15-2613

Duration of corporation to be perpetual, 15-2615

INDEX

References are to Title and Section numbers

DEVELOPMENT CREDIT CORPORATION ACT (Continued)

- Earnings, setting apart of portion as earned surplus, 15-2612
- Examination by department, 15-2614
- First meeting of corporation, 15-2608
- Liability of directors and officers for losses, 15-2606
- Member financial institutions
 - application for membership, 15-2610
 - loans to corporation, 15-2610
 - stock ownership, 15-2609
 - withdrawal from membership, 15-2611
- Powers and privileges, 15-2603
- Purpose, 15-2601
- Reports of condition to department required at least annually, copies to commissioner of insurance and governor, 15-2614
- Stockholders' and members' powers, 15-2607
- Stock ownership and limitations, 15-2609
- Surplus, setting aside of portion of, 15-2612
- Termination for failure to begin business, 15-2616
- Votes of stockholders, 15-2607

DIKES

See DAMS AND RESERVOIRS

DISASTERS

- Continuity of government, 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
- Governor's power to call militia forces, 1972 Const., VI, 13
- Importation of armed forces, application of legislature or governor, 1972 Const., II, 33
- State general fund aid authorized, 79-2501
 - implementation and administration of program, 79-2503
 - maximum expenditure in biennium, 79-2502
 - purposes of aid, 79-2501

DISCOVERY

- Admission of facts and genuineness of documents, request for, M. R. Civ. P., Rule 36
 - form suggested by rules, M. R. Civ. P., Appendix of Forms, Form 21
- Criminal procedure, rules for discovery, inspection, and notice, 95-1803
- Documents and papers, discovery and production, M. R. Civ. P., Rule 34
- Interrogatories to parties, M. R. Civ. P., Rule 33
- Physical and mental examination of persons, M. R. Civ. P., Rule 35
- Probate proceedings, application of procedures to, M. R. Civ. P., Rule 1
- Refusal to make discovery, effect, M. R. Civ. P., Rule 37
- Tangible objects, discovery and production, M. R. Civ. P., Rule 34

DISCRIMINATION

See CIVIL RIGHTS

DISEASE

See COMMUNICABLE DISEASES

- Tree disease control in forests and watersheds, 28-204 to 28-207—See FORESTS AND FORESTRY, Insect pests and tree diseases

DISORDERLY CONDUCT

See CRIMINAL OFFENSES, Disorderly conduct

DISTRICT COURTS

- Adjournments, 93-316
- Calling of juries for trial of causes, 93-315
- Chambers, acts and proceedings done in, M. R. Civ. P., Rule 77(b)
- Conciliation court, sitting as, 36-203
 - powers of conciliation court, 36-205
- Criminal jurisdiction, 95-301
- Departments, division of district into, 93-321

INDEX

References are to Title and Section numbers

DISTRICT COURTS (Continued)

Disqualification of judge

civil cases, 93-901

criminal cases, 95-1709

District boundaries, establishment and change, 1972 Const., VII, 6

District comprised of two or more counties, holding of court continuously and simultaneously in each or any county, power, 93-316

Fixing of terms where district comprises two or more counties, 93-315

Grand juries, summoning, discretion of district judge, 95-1401

Interstate agreement on detainers, district courts to function under, 94-1101-2, redes. 95-3132

Judges

absence from state forfeits judicial position, 1972 Const., VII, 10

arrest, judges privileged from, 95-616

assignment for temporary service from one district or county to another, 1972 Const., VII, 6

assignment of judges to departments, 93-321

criminal law study commission, service on, 94-1001-3, redes. 95-3133

election, 1972 Const., VII, 8

expenses when sitting outside district, or attending judges' conference, 93-305

expenses while holding court in other counties, 93-313

indictment against, filing, 95-1410

information against, procedure for permission to file, 95-1301

judicial standards commission, 1972 Const., VII, 11

nominations confirmed by senate, 1972 Const., VII, 8

number, 1972 Const., VII, 6; 93-302

oath of office, 1972 Const., III, 3

political candidacy forfeits judicial position, 1972 Const., VII, 10

practice of law, restrictions on, 1972 Const., VII, 9; 93-902

qualifications of judges, 1972 Const., VII, 9

removal and discipline of judges, 1972 Const., VII, 11

retired judge, call for duty, 93-1130

retirement system, 93-1107 to 93-1132—See JUDGES, Retirement system

salary, 1972 Const., VII, 7; 93-303

selection of judges, 1972 Const., VII, 8

solicitation of compensation on account of office prohibited, 1972 Const., VII, 9

substitution of district judge for supreme court justice, 1972 Const., VII, 3

terms of office, 1972 Const., VII, 7

judges in office on effective date of new constitution, 1972 Const., Transition Schedule, Sec. 4

vacancies, how filled, 1972 Const., VII, 8

Jurisdiction, 1972 Const., VII, 4

carrying concealed weapon, original jurisdiction in actions for violation of prohibition, 94-8-217

criminal offenses, 95-301

rules of civil procedure do not extend or limit jurisdiction, M. R. Civ. P., Rule 82

tort actions against state, 83-701

Number of districts, establishment and change, 1972 Const., VII, 6

Open at all times, M. R. Civ. P., Rule 77(a)

Pre-trial calendar, M. R. Civ. P., Rule 16

Process extends to all parts of state, 1972 Const., VII, 4

Removal of action to federal district court, transmittal of file, M. R. Civ. P., Rule 77(e)

Reporters

appointment by judges, 93-1901

attendance to duty in person required, 93-1907

copies of proceedings furnished to parties, fees, 93-1904

fees payable by parties before trial, 93-1905

notes of testimony and proceedings, filing with clerk, 93-1902

oath of office, filing, 93-1901

objections and exceptions, writing out and filing with clerk, 93-1903

prima facie correctness of reports, 93-1908

pro tempore reporter in absence of regular reporter, 93-1907

INDEX

References are to Title and Section numbers

DISTRICT COURTS (Continued)

Reporters (Continued)

reimbursement of expense outside county of residence, 93-1906

salary of reporter, 93-1906

transcript of evidence, admissibility, M. R. Civ. P., Rule 80

Review division of supreme court for review of criminal sentences, 95-2501 to 95-2504

Rules of practice adopted by district courts, 93-2801-4, M. R. Civ. P., Rule 83

Small claims courts created within jurisdiction of district courts, 93-322—See **SMALL CLAIMS COURTS**

Term of court, 93-315

Vesting of judicial power in district courts, 1972 Const., VII, 1

DISTRICT YOUTH GUIDANCE HOMES

See **YOUTH GUIDANCE CENTERS**, District youth guidance home, 10-1101 to 10-1111

DISTURBANCE

Schools, disturbance as misdemeanor, penalty, 75-8306

DITCHES

Municipal regulation of open ditches

declaration of nuisance, 11-4002

investigative powers of governing body, 11-4003

irrigation ditches exempt, 11-4006

notice to close and fill ditch, 11-4004

protective devices provided by owner, 11-4005

purpose of act, 11-4001

special improvement districts, 11-4006

Rural improvement districts authorized to build protection devices, 16-1601(1)

Taxability of ditches, 84-206

DIVORCE

See **MARRIAGE AND DIVORCE**

Registrar of vital statistics, report to, 69-4433

judicial information included in report, 69-4434

Surviving spouse, effect of divorce or annulment on succession, 91A-2-802

Will revoked by divorce or annulment, 91A-2-508

DOCKS AND WHARVES

Public service commission jurisdiction, 89-605

DOGS

Damages to livestock or poultry, liability of owner of dog, 16-4614

Guide dog, blind person's right to use in public places, 71-1306

penalty for violations, 71-1308

traffic to stop for person using guide dog, 71-1307

"Kennel" defined, 16-4602

Licenses

application, 16-4602

collar and license tag required, 16-4601

county commissioners may provide for, 16-4602

disposition of fees, 16-4612

fee, 16-4603

kennel license

application, 16-4602

fee, 16-4603

license year, 16-4602

municipal license tag in compliance with act, 16-4604

removal of tag when dog under immediate control of owner, 16-4601

required, 16-4601

"Owner" defined, 16-4615

INDEX

References are to Title and Section numbers

DOGS (Continued)

Public inspection of applications on file, 16-4603

Seizure and impounding

- contract with humane societies and other associations, authority for, 16-4607
- contract with municipal corporations for use of impounding facilities, authority, 16-4607
- county commissioners, duties, 16-4606
- county pound master, appointment, 16-4607
- disposition of impounded dogs, 16-4608
- dogs running at large without tags, 16-4605
- dogs suspected of rabies or known to have bitten human or animal, retaining, 16-4608
- fee for impoundment and keep, 16-4609
- fees and charges as charged against county, 16-4610
- fees, payment by owner claiming dog, 16-4610
- failure to pay pound fee, abandonment, 16-4611
- finer, disposition, 16-4612

Violation of act constitutes misdemeanor, 16-4613

DOOR-TO-DOOR SALES

- Cancellation of home solicitation sale, right of buyer, time allowed, notice, 85-503
- notice to buyer of right to cancel, form and contents, 85-504
- notice to seller, 85-503, 85-504
- return of goods by buyer, when required, 85-503, 85-505, 85-506

Care of goods by buyer, 85-506

Definition of terms, 85-502

Purpose of law, 85-501

- Return of down payment to buyer required, time allowed, 85-505 (1) (2)
- liability of seller for failure, 85-505 (3)
- retention of goods by buyer pending return of payment, 85-505 (4)

DOUBLE JEOPARDY

Constitutional prohibition, 1972 Const., II, 25

Former prosecution and multiple prosecutions, effect, 95-1711

DOWER

Abolished, 91A-2-112

DRAINAGE DISTRICTS

Assessments for construction, annual installments, 89-2348

Bonds

- interest rate, maximum paid, 79-2602
- definition of terms, 79-2601
- resolution for issuance of bonds or notes, 89-2501
- signatures on, 89-2501

- Improvements to land, facilities or structures subject to assessment, 89-2330
- districts created for drainage purposes only, assessment to improvements not applicable, 89-2330.2
- existing districts, vote of persons on assessment rolls required, 89-2330.1
- procedure for election, 89-2330.3

Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A

Special assessments, maximum interest paid, 79-2603

definition of terms, 79-2601

Special benefits, report and assessment of, 89-2333

DRIVER EDUCATION

See SCHOOLS, traffic education, 75-7901 to 75-7907

DRIVER LICENSE COMPACT

See OPERATORS' AND CHAUFFEURS' LICENSES, Interstate compact, 31-163 to 31-169

INDEX

References are to Title and Section numbers

DRUGS AND CONTROLLED SUBSTANCES

- See ALCOHOL AND DRUG DEPENDENCE; FOOD AND DRUGS, Food, Drug and Cosmetic Act, 27-701 to 27-723; NARCOTIC DRUGS, Dangerous Drug Act, 54-132 to 54-138
- Annual registration required for manufacturers, distributors and dispensers, 54-316
- board of pharmacists waiver of registration of practitioners licensed by federal government, 54-316 (4)
- denial, suspension, revocation or refusal of registration, grounds, procedure, 54-318, 54-319
- exemptions from registration requirement, 54-316
- federal law compliance as entitling applicant to registration, 54-317
- fees to be levied and collected by board, 54-315
- initial registration of prior registrants, 54-324
- inspection of establishment of registrant or applicant, 54-316
- limitations upon rights of registrants generally, 54-317
- registration to be issued unless inconsistent with public interest, factors considered, 54-317
- separate registration for each place of business required, 54-316
- waiver of registration requirement by board, 54-316
- Board of pharmacists to administer law, 54-302
- rules to be promulgated by board, 54-315
- Definition of terms, 54-301
- Educational programs to be designed and conducted by board, content of programs, 54-323
- Medical practitioners prohibited from dealing in drugs, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners
- Orders and rules not in conflict to remain in effect, 54-325
- Practitioners to be registered to dispense or conduct research with dangerous drugs 54-317
 - failure to register as misdemeanor, penalty, 54-327
 - schedule I drugs, federal registration as compliance, 54-317
- Prior proceedings to continue in effect, 54-324
- Research on misuse and abuse of drugs to be encouraged by board, 54-323
 - possession and distribution of drugs by researchers may be authorized, 54-323
 - withholding of names of persons subjected to research authorized, 54-323
- Schedule I drugs enumerated, 54-305
 - additions or deletions by board authorized, 54-302
 - criteria for placement of drug in schedule, 54-304
 - order form required for distribution from one registrant to another, 54-321
 - research practitioners, federal registration as compliance, 54-317
- Schedule II drugs enumerated, 54-307
 - additions or deletions by board authorized, 54-302
 - criteria for placement of drug in schedule, 54-306
 - order form required for distribution by one registrant to another, 54-321
 - prescription required for dispensing, limitation upon refilling, 54-322
- Schedule III drugs enumerated, 54-309
 - additions or deletions authorized, 54-302
 - criteria for placement of drug in schedule, 54-308
 - prescription required for dispensing, limitation upon refilling, 54-322
- Schedule IV drugs listed and described, 54-311
 - additions or deletions authorized, 54-302
 - criteria for placement of drug in schedule, 54-310
 - prescription required for dispensing, limitation upon refilling, 54-322
- Schedule V drugs listed and described, 54-313
 - additions or deletions authorized, 54-302
 - criteria for placement of drug in schedule, 54-312
 - medical purpose required for dispensing, 54-322
- Scheduling and rescheduling drugs by board, considerations to be followed, 54-302
 - addition to or deletion of drugs from schedule, 54-302
 - annual republication of schedules, 54-314
 - exclusion of drug in conformity to federal and other state law, 54-302
 - names of drugs used in schedules, 54-303
- Uniformity of construction, 54-326

INDEX

References are to Title and Section numbers

DUE PROCESS OF LAW

Constitutional guarantee, 1972 Const., II, 17

DURESS

Affirmative defense, M. R. Civ. P., Rule 8(c)

Uniform Commercial Code supplemented by general principles of law, 87A-1-103

E

EASEMENTS

Open-space conservation easements, 62-601 to 62-618—See PARKS, Open-space land

ECONOMIC DEVELOPMENT

See PLANNING AND ECONOMIC DEVELOPMENT

ECONOMIC LAND DEVELOPMENT ACT

Boundary changes in land use areas, petition, proof required, procedure, 84-7523

Certain nonprofit organizations, location in classified areas authorized, 84-7520 (4)

Changes in classification by governing body subject to review by department, 84-7508
grounds for overriding decision of governing body by department, 84-7508
original classification, 84-7508

Citation of act, 84-7501

Criteria for classification of land areas by department, 84-7507

Definition of terms, 84-7504

Effective dates, 84-7526

Election on implementation of classifications, effect of rejection by voters, 84-7506

Exemptions from act, 84-7522

Existing nonconforming uses unaffected, 84-7524

Management of classified areas by governing body, 84-7508

One or more ownerships of land, classification authorized, 84-7520 (3)

Persons over sixty-two years of age, negative effect prohibited, 84-7522

Plan to be adopted by governing body for classification of land areas within jurisdiction, 84-7505

categories used in preparing plan, 84-7505 (6)

display of data for land classification, 84-7505 (2)

final classification by department, criteria, 84-7507

final plan prepared and submitted to state administration agency, time for, 84-7505 (5)

"governing body" defined, 84-7504 (9)

hearing, notice, purpose, 84-7505 (3)

map prepared by governing body showing land area classifications, 84-7505 (3)

notice to landowners, contents, 84-7505 (3)

preliminary procedures required of governing body, 84-7505 (1) (a)

public meeting for explanation of classifications, 84-7505 (2)

reclassification by governing body upon request of landowner, 84-7505 (4)

Policy, findings and statement of legislature, 84-7502

Purpose of act, 84-7503

Reappraisal of land by department, 84-7525

Reclassification of classified land at option of owner, 84-7520 (1)

Revenue lost under provisions of act recovered by increased mill levy and not valuation, 84-7520 (2)

Rules and regulations, adoption, 84-7521

Subclassification of agricultural or recreational land outside city or town, 84-7509 to 84-7511

agricultural land, alternative classifications and appraised values, 84-7510

recreational land qualifying as agricultural land, alternative subclassifications and appraised values, 84-7511

Valuation of land for tax purposes, 84-7509 to 84-7519

agricultural land, 84-7510

commercial land, 84-7513

industrial land, 84-7514

industrial property expanded into classified industrial land, 84-7515

new industrial land, 84-7516, 84-7517

INDEX

References are to Title and Section numbers

ECONOMIC LAND DEVELOPMENT ACT (Continued)

- Valuation of land for tax purposes (Continued)
 - open space land, 84-7518, 84-7519
 - recreational land also qualifying as agricultural land, 84-7511
 - residential land, 84-7512

ECONOMIC OPPORTUNITY

- See PUBLIC WELFARE, Economic opportunity and poverty relief, 71-1601 to 71-1604

EDUCATIONAL RADIO AND TELEVISION

- Educational broadcasting commission, existence and composition, appointment and terms of members, 82A-511
 - allocated to state board of education for administrative purposes, exception, 82A-511 (4)
 - compensation of members, 75-9002
 - definition, 75-9001
 - meetings of commission, election of chairman, 75-9002
 - noncommercial and nonpolitical programming consistent with federal law, 75-9004
 - powers and duties of commission, 75-9003

ELECTIONS

- Absentee voting and registration
 - absentee ballots in precincts where voting machines are used, 23-3716
 - absent or physically incapacitated voter, right to vote, 23-3701
 - application for ballot, time limit, 23-3703
 - disposition of application, 23-3705
 - form, 23-3704
 - constitutional requirements, 1972 Const., IV, 3
 - deposit of absentee ballots in ballot boxes, 23-3713
 - disposition of marked ballot upon return to election officials, 23-3708, 23-3709
 - election judges' duties, 23-3711
 - electors in United States service
 - definition, 23-3718
 - federal postcard application, 23-3721
 - oath, 23-3720
 - registration, 23-3719
 - termination of service, registration after, 23-3724
 - federal post card application, classification of, 23-3721
 - instructions for voting, 23-3706
 - late ballots, rejection, 23-3709
 - mailing ballot, 23-3706
 - marking ballot, 23-3707
 - official misconduct, 23-3717
 - perjury, 23-3717
 - record of absentee ballots, 23-3710
 - rejection of ballot upon opening absentee ballot envelope, 23-3713
 - registration not cancelled if elector attempted to vote, 23-3013
 - right to subsequently vote in person, 23-3714
 - school district elections, 23-3702
 - unopened envelope containing ballot, casting of ballot, 23-3715
 - voting in person before election day, 23-3712
- Abuses of electoral process to be guarded against, 1972 Const., IV, 3
- Administration of elections, provision for, 1972 Const., IV, 3
- Arrest, electors privileged from arrest, 1972 Const., IV, 6; 23-2705, 95-616
- Ballots
 - arrangement and rotation of names on ballot, 23-3511
 - city elections, duties of city clerk, 23-3502
 - delivery prior to opening of polls, 23-3503
 - elections to be by secret ballot, 1972 Const., IV, 1; 23-2602
 - form of, 23-3512, 23-3514, 23-3515

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Ballots (Continued)

- long-term and short-term election for same office, long-term office to precede short-term on ballot, 23-3517
- number to be provided precincts, 23-3516
- offices, order of, 23-3513
- party designation, 23-3509
- pasters for nominee filling vacancy, 23-3510
- printed by registrars, 23-3506, 23-3507
- printing and distribution costs, 23-3508
- signing and affirmation, 23-3707
- stub, 23-3515
- uniformity, 23-3508

Bonds

- contests
 - grounds for challenge, 23-4201
 - hearing, 23-4202
- creation or increase in municipal or school indebtedness, qualifications for voting, 84-4711
- limitation of actions and defenses relating to state and municipal bond issues, 93-2612

Campaign contributions and expenditures

- accounts and reports open to public inspection, limitation, 23-4789
- challenging voters, prescribed procedure not a violation, 23-4746
- commissioner of campaign finances and practices appointed, term, filling of vacancy, removal, salary, 23-4785
 - attached to office of secretary of state for administrative purposes, exceptions, 23-4785 (6)
 - examination of statements filed, time for, procedure, 23-4787
 - order of noncompliance, when issued, procedure, 23-4787
 - powers and duties, 23-4786
- contribution as income tax deduction to contributor, 84-4906.1, 84-4906.2
- contributions, limitation of amount, 23-4795
- copies of act to be supplied to appropriate officials, 23-4794
- copies of campaign law furnished to certain public officers and candidates, 23-4732
- corporate and certain business contributions prohibited, 23-4744
 - salary increase intended as contribution prohibited, 23-4744.1
- county clerk and recorder, duties, 23-4790
- definition of terms, 23-4777
- depository to be designated by each candidate and political committee, purpose, 23-4781
 - statement showing source of funds deposited to be made and filed with each deposit, 23-4782
 - time for making deposits, 23-4782
- district court jurisdiction, 23-4760
- expenditures, limitations, 23-4727, 23-4728
- payment or receiving money in name of undisclosed principal prohibited, 23-4737
- prosecutions for violations, powers of county attorney, 23-4788
- purpose of law, 23-4776
- reports of contributions and expenditures required of each candidate and political committee, periods covered, time of filing, 23-4778
 - disclosures to be contained in reports, 23-4779
 - organizations to be governed by rules and regulations of commissioner, 23-4780 (3)
 - preservation of report required, 23-4780 (2)
 - verification of reports required, 23-4780
- statement, failure to file, penalties, 23-4791 to 23-4793
- treasurer to be appointed by each candidate and political committee, 23-4781 (1)
 - certificate of appointment, contents, filing, 23-4781 (1), (2)
 - contributions and expenditures prohibited until appointment made, 23-4781 (1)
 - death, resignation or removal of treasurer, appointment of successor and certification, 23-4781 (5)
 - deputy campaign treasurers, appointment, 23-4781 (2)

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Campaign contributions and expenditures (Continued)

- treasurer to be appointed (Continued)
 - inspection of records by opposing candidate or political committee, 23-4783 (2)
 - petty cash funds authorized, amount, 23-4784
 - powers and duties of treasurer and deputies, 23-4781 (4)
 - preservation of treasurer's records, 23-4783 (3)
 - qualifications of treasurer and deputies, 23-4781 (3)
 - records required of treasurers, 23-4783
- treating, giving or receiving prohibited, 23-4745
- violations, 23-4791 to 23-4793
 - certificate of election withheld, 23-4792
 - false report or deliberate failure to comply, penalties, 23-4793
 - name of candidate withheld from ballot for failure to file statement, 23-4791

Candidates for public office, eligibility, 1972 Const., IV, 4

Challenging electors

- grounds, 23-3611
- how determined, 23-3613
 - proceedings upon determination, 23-3616
- list of challenges, 23-3617
- oaths of persons challenged, 23-3612
- person refusing to be sworn, vote to be rejected, 23-3614
- trial by election judges at time of challenge, 23-3615

Congressmen

- certificate of election, 23-4403
- general election, chosen at, 23-4401
- residency required, 23-4404
- vacancy in office, 23-4402

Constitutional amendments

- attorney general's summary placed on ballot, 37-104.1
- printing and publication of proposed amendments, 23-2802

Constitutional convention question to be submitted each twenty years, form of ballot, 1972 Const., XIV, 3; 23-4801, 23-4802

Contest of election

- advancement of cases on docket, trial procedure, 23-4770
- bond elections, grounds, hearing, 23-4201, 23-4202
- form of complaint, 23-4771
- grounds for contest of nomination or office, 23-4758, 23-4763
- hearing of contest, 23-4767
- illegal votes received, allegations and evidence, 23-4765
- illegal votes rejected, declaration of result of election after, 23-4762
- nomination or election not to be vacated, when, 23-4764
- petition contesting nomination or election, contents, 23-4766
- time for commencing contest, 23-4759

Conventions to ratify proposed amendments to constitution of the United States, 23-4601

- ballot form, 23-4605
- certificate of result, 23-4609
- compensation of delegates and officers, 23-4608
- delegates, 23-4602
 - election of delegates, 23-4602
 - determination of election results, 23-4604
 - nomination of delegates, 23-4603
- federal law, superseding effect of, 23-4611
- officers and procedures, 23-4607
- qualifications of petitioners and electors, 23-4610
- quorum, 23-4607
- time for holding, 23-4606

County bond issue elections, electors, 16-2026

Criminal offenses

- adding to or subtracting from votes cast, 23-4709
- aiding or abetting in commission of offense, penalty, 23-4710
- altering election returns by officer as felony, 23-4706

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Criminal offenses (Continued)

- appointment to office offer to procure vote or aid as misdemeanor, 23-4716
- communication of offer as misdemeanor, 23-4717
- badges or insignia prohibited at polls, 23-4751
- betting on election as misdemeanor, 23-4721
- betting on election results as corrupt practice, penalty, 23-4748
- bribery, 23-4718, 23-4723
 - legislative caucus for political gathering, 23-4718
 - offenses constituting bribery, 23-4723
- certain demands or requests of candidate as corrupt practices, 23-4743
- certain public officers not to serve as delegate to convention or member of political committee, 23-4740
- certificate of nomination, offenses in reference to, 23-4712
- changing or altering ballot as felony, 23-4706
- coercion or undue influence of voters as corrupt practice, 23-4747
- compensating voter for loss of time prohibited, 23-4751
- corporate violations, 23-4768
- depositing ballot in ballot box without official stamp as misdemeanor, punishment, 23-4713
- disturbance of public meetings of electors as misdemeanor, 23-4720
- electioneering by officers as misdemeanor, punishment, 23-4713, 23-4714
- employer practices intended to influence employee voting unlawful, penalty, 23-4724
- false oath or affidavit as perjury, 23-4773
- forfeiture of nomination or office for violation, 23-4758
 - contest of right to take office, procedure, 23-4759 to 23-4770—See Contest of election, above
 - when not forfeited, 23-4757
- forging or counterfeiting returns, penalty, 23-4708
- forging or falsifying official endorsement on ballot as felony, punishment, 23-4712
- fraudulent registration, penalty, 23-4702
 - attempt as misdemeanor, 23-4704
- fraudulent voting as felony, 23-4703
 - attempt as misdemeanor, 23-4704
- furnishing entertainment or money to influence election as misdemeanor, 23-4715
- inducing person to accept or decline nomination, penalty, 23-4756
- inducing person to be or not to be candidate by payment or promise of reward, 23-4742
- interference with conduct of election as misdemeanor, punishment, 23-4714
- interference with right of suffrage, penalty, 23-4711
- libel, 23-4754
- officers violating election laws as misdemeanor, 23-4701
- personating another elector, penalty, 23-4749
- preventing assembly of electors as misdemeanor, 23-4719
- procuring illegal vote as misdemeanor, 23-4705
- promise to procure appointment or election by candidate, 23-4738
- publications in newspapers and periodicals, limitations, 23-4752
- public employees, unlawful coercion as misdemeanor, penalty, 23-4724
 - solicitation by public employee in aid or promotion of election as misdemeanor, penalty, 23-4724 (2) to (4)
- solicitation of votes on election day, 23-4753
- transfer of convention credentials for money or other valuable, 23-4741
- unfolding or marking ballot by judge or clerk, penalty, 23-4707

Definitions, 23-2601

Election judges and clerks

- appointment, 23-3201
- assistance to disabled electors, 23-3609
- choosing, manner of, 23-3202
- compensation of judges and clerks, 23-3207
- continuation until successors appointed, 23-3203
- duties, 23-3201
- instruction of judges and clerks, 23-3206
- notices of election, posting of, 23-3204

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Election judges and clerks (Continued)

- notification of appointment, 23-3204
- number of judges and clerks, 23-3201
- oaths and their administration, 23-3205
- vacancies, 23-3203

Election laws, distribution of, 23-2904

Election precincts, 23-3101

- polling place, designation of, 23-3103
- ward boundaries, 23-3102

Electors

- arrest immunity, 1972 Const., IV, 6; 23-2705, 95-616
- presidential electors, 23-4301 to 23-4307—See Presidential electors, below
- qualifications, U. S. Const., Amd. 26; 1972 Const., IV, 2; 23-2701
- elections on constitutional amendments, 23-4610

Electronic voting systems

- approval of marking device or automatic tabulating equipment, 23-3906
- ballot information, 23-3904
- closing polls, procedure upon, 23-3905
- damaged or defective ballots, 23-3905
- definitions, 23-3902
- election laws in general, applicability of, 23-3907
- paper ballot, elector may request, 23-3903
- purpose of act, 23-3901
- returns, 23-3905
- rules, 23-3906
- testing of automatic tabulating equipment, 23-3904
- use, where authorized, 23-3903
- voting booths, 23-3904
- write-ins, 23-3904

Executive officers of state, terms, elections, qualifications, 1972 Const., VI, 1 to 3

Free exercise of suffrage guaranteed, 1972 Const., II, 13

General election, time for holding, 23-2604

Governor-elect, orderly transition of power to, 82-1311 to 82-1314

Gubernatorial campaign fund established from income tax liability deductions, 23-4901 to 23-4906

- definition of terms, 23-4902
- designation of deduction by taxpayers, amount, 23-4903
- designation optional with taxpayers, 23-4903
- equal division of fund among political parties, 23-4904
- “political party” defined, 23-4902
- experimental nature of law, 23-4901
- income tax form to have space for making designation, 23-4903
- moneys designated to be deposited in fund, 23-4904
- purpose of law, 23-4901
- record of disbursements to be kept by political parties, 23-4905
- record available for inspection, copy deposited in office of secretary of state, 23-4905
- use of moneys from fund for purpose other than legitimate campaign expenses as criminal offense, punishment, 23-4906

Initiative measures, attorney general's summary placed on ballot, 37-104.1

Justices of supreme court and district courts

- each vacancy a separate and independent office for election purposes, 23-4501
- endorsement by political party unlawful, 23-4511
- forfeiture of judicial position, 1972 Const., VII, 10
- incumbent justices and judges, forms of ballot for retention in office, 23-4510.1, 23-4510.2
- judicial primary ballots, 23-4505, 23-4506
- separate counting and canvassing, 23-4507
- nominations, 1972 Const., VII, 8; 23-4502
- certification of candidates' names, 23-4504
- declarations, 23-4503
- fee, 23-4503

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Justices of supreme court and district courts (Continued)

nominations (Continued)

highest vote in primary, 23-4508

register of candidates for nomination, entry on separate page of, 23-4504

tie vote, 23-4509

political party endorsement unlawful, 23-4511

qualifications, 1972 Const., VII, 9

vacancies after primary, 23-4510

Justices of the peace, 1972 Const., VII, 5

Legislators, election, terms and qualifications, 1972 Const., IV, 3, 4

election and qualifications of members judged by each house, 1972 Const., V, 10

Local government alternative form submitted to electors, 1972 Const., XI, 9

county government optional form, officers to be elected, 1972 Const., XI, 3

self-government charters, 1972 Const., XI, 5

Nonpartisan nomination and election of judges, 23-4501 to 23-4511—See Justices of supreme court and district courts, above

Plurality of votes elects, 1972 Const., IV, 5

Political parties

central committees, 23-3403 to 23-3405

committeemen, 23-3401, 23-3402

convention expenses, payment of, 23-3407

powers, 23-3406

state conventions to nominate presidential electors, payment of delegates to, 23-3407

Polling place, designation of, 23-3103

Polls

announcement of voter's name, 23-3618

assistance to disabled electors, 23-3609

poll watchers, 23-3618

proclamation prior to opening or closing, 23-3602

prohibited conduct, 23-3605

putting ballot in box, 23-3608

election judge only to put ballot in box, 23-3607

voting—See Voting, below

voting booth, 23-3604

Precinct registers

copies of, 23-3028

entry of name upon, charge for, 23-3027

marking and signing at time of voting, 23-3610

Presidential electors

compensation, 23-4306

list of electors elected, 23-4303

list of persons voted for, 23-4305

meeting and voting of electors, 23-4304

nomination, 23-4302

returns and canvassing, 23-4303

to be elected, 23-4301

vacancies, 23-4307

votes for president and vice-president of each party counted for candidates for electors of the party, 23-4302

Presidential preference primary election to be held in presidential election years, 23-3322

ballots, 23-3323, 23-3324

listing of candidates, 23-3324

"no preference" position on ballot, 23-3324

regular ballots used, placement of presidential section, 23-3323

date of election, 23-3322

nomination petition required for placement of candidate on ballot, 23-3325

form and contents of petition prescribed by secretary of state, 23-3325

petitions forwarded to secretary of state, 23-3326

presentation of petition to county clerk and recorder, time for, 23-3326

signatures required, 23-3325

verification of signatures, 23-3326

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Presidential preference primary election (Continued)

- notification of candidates of placement on ballot, time for, 23-3327
- affidavit of noncandidacy, filing with secretary of state, time for, 23-3327
- result of election, use by political parties discretionary, 23-3328

Primary nominating election

- abstracts of votes, 23-3313, 23-3314
- ballots, 23-3308, 23-3309
- candidates to be selected, 23-3301
- certificates of nomination, 23-3318, 23-3319
 - number of signatures required to be determined by secretary of state for certain candidates, 23-3318.1
- cities over certain size, procedure in, 23-3302
- contesting nominations, 23-3316
- counting of ballots, 23-3310
- date for holding, 23-3301
- declaration of nomination, 23-3304, 23-3305
 - indigent candidate, documents accepted in lieu of filing fee, 23-3304 (7)
- declining nomination, 23-3321
- election clerks and judges
 - compensation, certificate for, 23-3313
 - duties, 23-3310 to 23-3312
- errors, 23-3315
- independent candidates in districts embracing census enumerator divisions, signatures needed for nominating petitions, 23-3318.1
- notice, 23-3303
- penalty for violation of act, 23-3317
- political parties, 23-3320
- precinct register, marking, 23-3610
- register of candidates, 23-3306
- registrar's or city clerk's duties, 23-3307
- removal of candidate from office, 23-3317
- secretary of state
 - canvass by, 23-3314
 - duties, 23-3307
- tally sheets, 23-3311
- tie, decision by lot in event of, 23-3313
- vacancies, 23-3321
- violation of act, penalty for, 23-3317
- wrongful acts, 23-3315

Proclamations

- county commissioners, 23-2903
- governor, 23-2901
 - publication, 23-2902

Questions submitted to popular vote, advertisement of, 23-2801

Recounts

- application for, 23-4101
 - considering several applications together, 23-4108
- certificate of election
 - certification of recount results, 23-4117
 - effect of recount on, 23-4112
 - issuance by state board of canvassers, 23-4118
- conditions under which recount to be made, 23-4103
- counting of votes
 - determining total vote cast, 23-4113
 - persons entitled to appear at recount, 23-4116
 - sealing recounted ballots, 23-4111
- county recount board
 - certification of result, 23-4117
 - composition, 23-4114
 - meetings, 23-4115
- district court
 - disqualified judge, substituting for, 23-4105

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Recounts (Continued)

district court (Continued)

jurisdiction retained until cause finally determined, 23-4105

limiting recount to certain precincts, 23-4106

service upon other candidate, opportunity to be heard, 23-4110

expense of, 23-4107

apportionment of, 23-4108

failure to comply with provisions for counting votes, presumption of incorrectness from, 23-4104

limitations on recount, 23-4102

manner of, 23-4109

state and county charges for expenses, 23-4122

state board of canvassers, reconvening of, 23-4118

issuance of new certificate of election or nomination, 23-4118

tie votes, 23-4119 to 23-4121

Referendum measures, attorney general's summary placed on ballot, 37-104.1

Registrar

city elections, duties of city clerk, 23-3502

county clerk and recorder as ex officio registrar, 23-3002

deputy registrars, 23-3003

distribution of copies of election laws, 23-2904

election judges to be notified of their appointment, 23-3204

hours office open for registration, 23-3005

sufficient help and supplies to be provided by commissioners, 23-3026

Registration

cancellation of registry

felony conviction lists sent to registrars, 23-3014

for failure to vote, 23-3013

for other reasons, 23-3014

reregistration, 23-3013, 23-3014

challenges, 23-3015

closing of registration prior to election, 23-3016

registration during that period, 23-3017

constitutional requirements, 1972 Const., IV, 3

elections on incurring of certain state indebtedness, notice and closing of registration for, 23-2704

elector's identity, 23-3018

erroneous omission of elector's name from precinct register, 23-3020

felony provision, 23-3006

hours of registration, 23-3005

infirm electors, registration at residence, 23-3007

list of registered electors, 23-3012

list of registered electors shown on precinct registers, 23-3023

method of registering, 23-3006

absent electors in United States service, 23-3006

mail, registration by, 23-3006 (2)

name of elector in precinct register as prima facie evidence of right to vote, 23-3018

naturalized citizens, 23-3021

new-voter list, submission to major parties by highway patrol, 23-3001

poll booth registration authorized, 1972 Const., IV, 3

precinct registers

compelling entry of name, 23-3019

list of registered electors shown on, 23-3023

marking after elector has voted, 23-3610

omission of name, 23-3020

preparation of, 23-3012, 23-3024

right to vote, name in register as prima facie evidence of, 23-3018

signature of elector required, 23-3018

affidavit in behalf of those unable to sign, 23-3018

previous registration, inquiry as to, procedure, 23-3011

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Registration (Continued)

- prospective voter not qualified at time of registration, 23-3008
- registration cards, numbering, 23-3005
- registry book and card index, 23-3004
- residence, rules for determining, 23-3022
- school district to be shown in registration, 23-3004.1
- transferring registry
 - elector's duties, 23-3009
 - registrar's duties, 23-3010
- United States citizenship, 23-3008

Residence requirements, 1972 Const., IV, 3

- rules for determining as prerequisite to registration or voting, 23-3022

Returns

canvass

- commenced as soon as polls closed, 23-4001
- method of, 23-4002
- public and without adjournment, 23-4001

counting

- manner of, 23-4003
- rejected ballots, marking of, 23-4004

county canvass

- commissioners as board of county canvassers, 23-4009
- nonessentials to be disregarded, 23-4011
- public, 23-4011
- registrar as clerk of board of county canvassers, 23-4009
- results

- certificates of election, 23-4014
- declaration of persons elected, 23-4013
- entered on record, 23-4012
- statement, contents, 23-4012
- tie, certification of, 23-4013

time of, 23-4010

- plurality of votes elects, 1972 Const., IV, 5
- pollbooks, signing and certifying of, 23-4005
- registrar, items to be sent to, 23-4006
- disposition of, 23-4007, 23-4008

state canvass

- board, 23-4016
 - transfer to office of secretary of state, 82A-2102
- commissions
 - governor to issue to person elected, 23-4018
 - secretary of state to issue governor's commission, 23-4018
- defects in returns, 23-4019
- messenger may be sent for returns, 23-4017
- state returns, how made and transmitted, 23-4015

Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A

School elections, 75-6401 to 75-6423—See SCHOOL DISTRICTS AND TRUSTEES, Elections

- annual election of trustees, 75-5912 to 75-5915

Secret ballot required, 1972 Const., IV, 1

Supplies

- city elections, duties of city clerk, 23-3502
- election return forms, 23-3504, 23-3505
- items to be furnished by commissioners, 23-3501
- voting machines, 23-3810

Time

- general elections, time for holding, 23-2604
- hours for opening and closing of polls, 23-2605

Violations

- attempting to vote at second polling place after vote has been rejected, 23-3025

INDEX

References are to Title and Section numbers

ELECTIONS (Continued)

Violations (Continued)

- deceiving illiterate, blind or disabled voter while assisting him, 23-3812
- election day, prohibited conduct on, 23-3605
- in general, 23-2606
- judicial candidates, endorsement by political party, 23-4511
- primaries, 23-3317
- registration, 23-3029
- voting machines, 23-3820, 23-3821

Voting

- absent or incapacitated voters, 23-3701 to 23-3723—See Absentee voting and registration, above
- announcement of voter's name, 23-3618
- assistance to disabled electors, 23-3609
- challenging elector—See Challenging electors, above
- delivery of ballots to elector, 23-3603
- instruction cards, 23-3601
- method of, 23-3606
- poll watchers, 23-3618
- precinct register book, marking of, 23-3610
- proclamation prior to opening or closing polls, 23-3602
- prohibited conduct, 23-3605
- putting ballot in box, 23-3608
 - only election judge to place ballot in ballot box, 23-3607
- voting booths, 23-3604

Voting machines

- approval, specifications required for, 23-3802
- assistance to illiterate, blind or disabled voters, 23-3812
 - punitive provision for deceiving elector, 23-3812
- counting votes, 23-3813
 - procedure after count, 23-3814
- election board, composition of, 23-3806
- election judges, instruction by registrar, 23-3807
- election laws in general, applicability of, 23-3822
- exhibition and demonstration, 23-3809
- experimental use, 23-3817
- information concerning machine, publication of, 23-3808
- machine breakdowns, 23-3818
- paper ballot, elector may request, 23-3818
- paper ballots for voting on certain money issues, 23-3819
- payment for, 23-3803
- penalties
 - causing false statement, certificate or return to be signed, 23-3821
 - causing incorrect vote, 23-3821
 - deceiving illiterate, blind or disabled voters while assisting them, 23-3812
 - tampering with machine, 23-3820
- placement of machines, 23-3806
- preparation for use, 23-3804
- registrar to instruct election judges, 23-3807
- registry list, 23-3811
- return sheets, 23-3815
- secretary of state's duties, 23-3801
- supplies, 23-3810
- tally sheets, disposition of, 23-3815
- time voter may remain in booth, 23-3806
- write-ins, 23-3805
 - disposition of, 23-3815

ELECTRICIANS

- Appliance sales and connections exempt from license requirements, 66-2812
- Apprentices, registration with board, 66-2817
 - exemption from license requirement, 66-2815
 - scope of work permitted apprentice, 66-2812
- Definition of terms, 66-2803

INDEX

References are to Title and Section numbers

ELECTRICIANS (Continued)

- Energizing electrical installations by power suppliers, requirements, 66-2805.1
 - "power suppliers" defined, 66-2805.1 (2)
 - reasonable and uniform fee to be established by department, 66-2805.1 (1)
 - unlawful without inspection tag and payment of fee, 66-2805.1 (4)
- Exemptions from provisions of act, 66-2812
- Inspection of installations by department, issuance of inspection tags, 66-2805.1
- License required to work as electrician or contractor, 66-2806
 - annual license fees, 66-2815
 - contractors to be licensed annually, 66-2814
 - educational requirements for license, 66-2807
 - examination of applicants for license, 66-2807
 - exemptions from license requirements, 66-2812
 - experience required for license, 66-2807
 - schooling substituted for experience, 66-2815
 - expiration of licenses, 66-2807
 - fees for licenses
 - contractor's annual fee, 66-2814
 - disposition and use of fees, 66-2819
 - examination fees, 66-2815
 - journeyman's license, requirements for, 66-2807 (2)
 - master electrician's license, requirements for, 66-2807 (1)
 - municipal licensees, licensing without examination, 66-2811
 - reciprocal licensing of nonresidents, 66-2809
 - renewal of licenses, 66-2807
 - temporary permits, issuance and duration, 66-2810
 - unauthorized use of designation as electrician, 66-2808
- National Electrical Code to govern installations, 66-2802
- Penalties for violation of act, 66-2820
- Purpose of electrical safety law, 66-2802
- Receipts under act, deposit and use, 66-2819
- State electrical board, existence and composition, appointment, qualifications and terms of members, 82A-1602.10
 - administrative services provided by department, 82A-1603
 - compensation and expenses of members, 82A-1602.10
 - continuation in office of board members, 82A-1606
 - employment of personnel for board, 82A-1604
 - inspection functions transferred, 82A-1203
 - legal assistance in hearings by board, 82A-1604
 - meetings of board, frequency, 66-2805
 - oath of members of board, 66-2805
 - organization and powers of board, 66-2805
 - quorum for transaction of business, 82A-1602.10
 - retention of functions by board, 82A-1605
- Violations of act, penalties, 66-2820

ELECTRICITY

- Criminal mischief causing interruption or impairment of service or supply, punishment, 94-6-102 (2)

ELECTRIC LINES

- Fiber glass insulators used in construction, 24-107
- Financing statements of utility, contents and place of filing, 87A-9-302.2
 - definition of terms, 87A-9-302.1
 - Uniform Commercial Code, application, 87A-9-302.3
- Overhead lines relocated for purpose of installing agricultural improvement, 24-201 to 24-204—See PUBLIC UTILITIES, Overhead utility lines
- Underground facilities
 - conversion to underground, 70-601 to 70-635—See PUBLIC UTILITIES, Underground conversion
 - excavations, protection from, 32-4801 to 32-4808—See STREETS, Underground facility

INDEX

References are to Title and Section numbers

ELECTRIC SUPPLIERS

Energizing electrical installation, regulation, 66-2805.1—See **ELECTRICIANS**

Territorial integrity

- agreements between suppliers waiving rights to serve premises, 70-504
- appeal to supreme court, 70-507
- citation of act, 70-501
- definition of terms, 70-502
- district court jurisdiction of disputes, 70-506
 - appeal to supreme court, 70-507
- industrial and commercial premises, special provisions relating to, 70-503
- injunction to enforce rights of suppliers, 70-507
- municipally annexed areas, rights and restrictions on suppliers in, 70-505
- outlying areas, rights and restrictions of suppliers in, 70-503
- previous contracts and construction protected, 70-508
- remedies of suppliers for violations, 70-507

ELECTROLOGY

Board of cosmetologists created, composition, appointment, qualifications and terms of members, 82A-1602.8—See **COSMETOLOGY**, Board of cosmetologists

rules, adoption authorized, 66-3607

Definition of terms, 66-3602

Fees for licenses, deposit and use by board, 66-3608

Legislative findings and purpose, 66-3601

License required for practice of electrology, exceptions, 66-3603

“electrology” defined, 66-3602 (1)

qualifications of applicants for license, 66-3604

reciprocity with other states, 66-3606

requirements for issuance of license, 66-3604

Penalties for violations, 66-3607

Premises where electrology practiced, license required, 66-3605

EMBALMERS

See **MORTICIANS AND FUNERAL DIRECTORS**, 66-2701 to 66-2717

EMERGENCY MEDICAL SERVICES

Board of medical examiners, adoption of rules, 69-7008

Construction of act, 69-7010

Declaration of policy and purpose, 69-7001

Definition of terms, 69-7004

Department of health and environmental sciences to establish program, powers and procedure, 69-7002

Emergency medical technicians, classification, acts allowed to be performed by, 69-7005 to 69-7007

Immunity of technicians from liability for failure to obtain consent, 69-7009

Legislative findings and purpose of law, 69-7003

Plan of co-operation to be developed in writing with other departments or divisions, 69-7002

EMINENT DOMAIN

Airport authority exercising power, procedure for, 1-910

Answer of defendant, filing and contents, 93-9910

Assessment of compensation, dates from which made, 93-9913

Award exceeding final offer of condemnor to include necessary expenses of litigation of condemnee, 93-9921.1

Commissioners, appointment and meeting, 93-9912

Constitutional requirement for just compensation, 1972 Const., II, 29

Flood control projects, acquisition by county or municipality for, 89-3303

Interest on award, 93-9913

Preliminary condemnation order, 93-9911

Relocation assistance for federally assisted projects, 93-9927 to 93-9944—See **RELOCATION ASSISTANCE**

INDEX

References are to Title and Section numbers

EMINENT DOMAIN (Continued)

- Relocation assistance for persons affected by state highway department's land acquisitions, 32-3923 to 32-3931—See HIGHWAYS, BRIDGES AND FERRIES, Right of way acquisition for state highways
 - no new element of condemnation damages created, 32-3931
- Reservoir sites, evidence required, 93-9902
- Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
- Strip or open pit mining of coal not public use, 93-9902, 93-9902.1
- Urban renewal, power of municipality, 11-3908

EMPLOYERS AND EMPLOYEES

- Discrimination in employment, freedom from as civil right, 64-301
 - discriminatory practices unlawful, 64-304 to 64-312—See CIVIL RIGHTS, Discriminatory practices
- Mandatory leave of absence for employees holding public office, return requirements, 59-1011
 - unemployment benefit cost not charged to employer, 59-1012
- Occupational disease act, 92-1301 to 92-1368
- Right to pursuit of life's basic necessities, 1972 Const., II, 30
- Winter work programs, 41-1901 to 41-1907—See WINTER WORK PROGRAMS

EMPLOYMENT AGENCIES

- Advertising to indicate status as employment agency, 41-1433
- Citation of act, 41-1417
- Complaints against agencies, investigation, 41-1423
- Contract with applicant for employment, form and contents, 41-1420
 - approval by director required, 41-1421
- Definition of terms, 41-1418
- Discriminatory practices unlawful, 64-306—See CIVIL RIGHTS, Discriminatory practices
- Exclusiveness of chapter, 41-1438
- False advertising prohibited, 41-1433
- Fees, when chargeable to applicants for employment, 41-1431
 - duplicate referrals to same employer, entitlement to fee, 41-1433
 - excessive fees, return by agency, 41-1432
 - maximum fees, 41-1431.1 (2)
 - registration fee prohibited, 41-1433
 - return of unearned fees, 41-1431.1 (3)
 - short term employment, maximum fees, 41-1431.1 (1)
 - splitting of fees prohibited, 41-1433
- Filing of complaints with department, disposition, 41-1434.1
- Inducing termination of employment prohibited, 41-1433
- Inspection powers of director, 41-1419
- Labor dispute, referrals prohibited, 41-1433
- License required for conduct of business, 41-1424
 - application for license, contents, 41-1426
 - bond required of licensee, 41-1425
 - change in management of licensee, consent required, 41-1428
 - denial, suspension or revocation of license, grounds for, 41-1429
 - display of license, 41-1433
 - expiration of license, 41-1427
 - fees for licenses, 41-1430
 - disposition of fees, 41-1438
 - political subdivision licensing permitted, 41-1438
 - transfer of license, consent required, 41-1428
- Nonresidents, jurisdiction, 41-1437
- Political subdivision licenses permitted, 41-1438
- Reconfirmation of job openings required before referral of applicant, 41-1422
- Records required of agencies, 41-1419
- Rules and regulations, 41-1423
- Subpoena power of director, 41-1423
- Violation of requirements
 - assurance of discontinuance, acceptance and approval, 41-1435
 - civil penalty for violation of court order, 41-1436
 - prosecuting officials, reference to, 41-1434
 - unlicensed operation as misdemeanor, 41-1424

INDEX

References are to Title and Section numbers

EMPLOYMENT SECURITY

See UNEMPLOYMENT COMPENSATION

ENERGY CONSERVATION

- Research, development, and demonstration of alternative energy sources, grants available for, 84-7407 to 84-7413
 - account established for administration of program, 84-7409
 - alternative energy advisory committee, appointment authorized, 84-7410
 - applications for grants, contents and formal requirements, 84-7411
 - criteria for awarding grant, 84-7412
 - biennial report of department to legislature, 84-7413
 - definition of terms, 84-7408
 - powers of department, 84-7410
 - purpose of law, 84-7407
- Tax incentives for investment in recognized nonfossil form of energy generation, 84-7401 to 84-7413
 - application by taxpayer, duties of department, 84-7404
 - definition of terms, 84-7402
 - financing by public utility authorized, interest charged, tax credit for deficiency, 84-7405
 - limitations, 84-7406
 - purpose of act, 84-7401
 - tax treatment of investments, 84-7403

ENGINEERS AND LAND SURVEYORS

- Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623
- Board of professional engineers and land surveyors
 - administrative services provided by department, 82A-1603
 - allocation to department for administrative purposes, 82A-1602
 - appointment, qualifications, removal and terms of members, 82A-1602.11
 - compensation and expenses of members, 66-2351
 - continuation in office of board members, 82A-1606
 - employment of personnel for board, 82A-1604
 - existence and composition of board, 82A-1602.11
 - legal assistance in hearings by board, 82A-1604
 - retention of functions by board, 82A-1605
- Co-ordinate system, 67-2011 to 67-2019—See CO-ORDINATE SYSTEM
- Corner recordation act, 67-2001 to 67-2010—See PROPERTY, Real property, corner recordation
- Corporations for practice of professional engineering, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
- Criminal offenders, licensing of, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS
- Definition of terms, 66-2350
- Engineering practice, what constitutes, interpretation, 66-2369 (1)
- Exemption of certain persons and practices, 66-2367
- Investment advice exempt from securities act, 15-2004
- Land surveyor practice, what constitutes, interpretation, 66-2369 (2)
- Public works, direct charge and supervision of professional engineer or land surveyor required, 66-2363
 - plans and specifications without seal of professional engineer or land surveyor not accepted, 66-2363
- Registration required of professional engineers and land surveyors, 66-2357
 - application for registration, contents, formal requirements, 66-2358
 - certificates of registration issued to qualified applicants, 66-2360
 - prima facie evidence of holder's registration and qualifications, 66-2360
 - engineer-in-training, requirements for registration, 66-2357 (1) (b)
 - enrollment by department of in-training registrants, 66-2360 (4)
 - examination of applicants, time and place, scope, 66-2359
 - existing certificates recognized, new registration not required, 66-2362
 - expiration of certificate, renewal, fee, 66-2361
 - fees for registration, 66-2358

INDEX

References are to Title and Section numbers

ENGINEERS AND LAND SURVEYORS (Continued)

Registration required (Continued)

- land surveyor-in-training, requirements, 66-2357 (2) (b)
- land surveyor, registration requirements, 66-2357 (2)
- lost, destroyed, or mutilated certificate, issuance of new certificate, 66-2365 (4)
- persons registered by other states or authorities, reciprocity, 66-2364
- professional engineer, requirements for registration, 66-2357 (1)
- revocation, suspension, or refusal to renew certificate, grounds, procedure, 66-2365
- reissuance of certificate, 66-2365 (4)
- reprimand of registrant, 66-2365 (4)
- seal authorized for registered engineers and land surveyors, 66-2360 (3)
- Roster of registered professional engineers and land surveyors published by department, distribution of copies, 66-2356
- Temporary permits, circumstances under which issuance authorized, 66-2368

ENVIRONMENTAL POLICY

Citation of act, 69-6501

Constitutional requirement for protection and improvement, 1972 Const., IX, 1

Consultation and co-operation with other agencies, 69-6517

Council on environmental quality, composition, 69-6508

- meetings of council, 69-6510
- officers of council, 69-6509
- per diem and expenses of council members, 69-6510
- qualifications of appointive members, 69-6508
- terms of office of members, 69-6509

Declaration of state policy, 69-6503

- specific statutory obligations of state agencies unaffected, 69-6506

Directions to state agencies on implementation of policies, 69-6504

- specific statutory obligations unimpaired, 69-6506

Employment of personnel by director, 69-6512

- duties of staff in general, 69-6514

Examination of records of government agencies, 69-6515

Executive director, appointment and qualifications, 69-6511

- duties of director in general, 69-6514
- removal from office, 69-6513
- term of office, 69-6513

Fees charged by state agencies, purpose, amount, disposition, 69-6518

Hearings by council, 69-6516

Lake areas, protection of, 89-3701 to 89-3712—See LAKES

Mines and mining

- open cut mining, policy statement, 50-1502
- reclamation of mining lands, legislative findings, 50-1201
- strip mining, policy statement and findings, 50-1035
- mine site location, policy statement, 50-1602
- uranium solution extraction, control and regulation of, 50-1701 to 50-1704—See MINES AND MINING, Uranium solution extraction

Oil and gas, abandoned wells and other land disturbances violating reclamation rules, procedure for reclamation, 60-149

Purpose of act, 69-6502

Reclamation of lands, 1972 Const., IX, 2

Resource indemnity trust account tax, Const., IX, 2; 84-7001 to 84-7013—See TAXATION

Review of statutory authority and recommendations to governor and council, 69-6505

Right to clean and healthful environment, 1972 Const., II, 3

Subpoena powers of council, 69-6516

Supplementary nature of policies and goals set forth in act, 69-6507

EQUAL PROTECTION OF THE LAWS

Constitutional guarantee, 1972 Const., II, 4

ESCHEAT

See DECEDENTS' ESTATES, Escheated estates

INDEX

References are to Title and Section numbers

ESTATE TAX

See INHERITANCE TAX

ESTOPPEL

Affirmative defense, M. R. Civ. P., Rule 8(c)

Uniform Commercial Code supplemented by general provisions of law, 87A-1-103

ETHICS

Code prohibiting conflicts of interest involving legislators and other public officials, 1972 Const., XII, 4

EVIDENCE

Accident reports confidential, 32-1213

Amendment of pleadings to conform to evidence, M. R. Civ. P., Rule 15(b)

Certificate of compliance or noncompliance with provisions of occupational disease act, 92-1356

Concealment, alteration or destruction of physical evidence as obstruction of justice, penalty, 94-7-303

Criminal procedure, production and suppression of evidence, 95-1801 to 95-1806—See CRIMINAL PROCEDURE, Evidence

Depositions, M. R. Civ. P., Rules 26 to 32—See DEPOSITIONS
criminal procedure, 95-1802

Discovery, M. R. Civ. P., Rules 33 to 37—See DISCOVERY
criminal procedure, 95-1803

Endangering welfare of child, admissible evidence, 94-5-607 (3)

Exceptions to rulings of court unnecessary, M. R. Civ. P., Rule 46

Gambling equipment, retention by magistrate following seizure, 94-8-411

Harmless error in admission or exclusion, effect on judgment or order, M. R. Civ. P., Rule 61

House of prostitution, admissible evidence, 94-5-603 (4)

Interpreters, M. R. Civ. P., Rule 43(f)

Machine guns

possession or use for offensive or aggressive purpose, when presumed, 94-8-204, 94-8-208

presence in room, boat, or vehicle as evidence of possession of each occupant, 94-8-205

Motions, evidence presented on hearing of motions, M. R. Civ. P., Rule 43(e)

Notices, construction according to ordinary acceptance of terms, 93-401-22

Offer of proof, recording in case evidence excluded, M. R. Civ. P., Rule 43(c)

Official records, method of proof, M. R. Civ. P., Rule 44

Physical evidence, tampering with or fabricating as criminal offense, punishment, 94-7-208

Pre-trial conference, agreements as to evidence, M. R. Civ. P., Rule 16

Privileged communications between psychologist and client, 66-3212

Radar concerning motor vehicle violations, 32-2150.1

Stenographic transcripts of previous evidence, M. R. Civ. P., Rule 80

Subpoena for production of evidence, M. R. Civ. P., Rule 45(b)

Uniform Probate Code, evidence of death or status, 91A-1-107

Variance from pleadings, amendment of pleadings, M. R. Civ. P., Rule 15(b)

Voluntary partial payment of damage claim not construed as admission, waiver or release, 93-2201-9

excess of payment over judgment not recoverable, 93-2201-9

judgment to be credited with amount of payment, 93-2201-9

legislative policy, 93-2201-7

nonseparability of provisions, 93-2201-10

"person" defined, 93-2201-8

recoverable damages not reduced by partial payment, 93-2201-9

voluntary payment inadmissible on trial of damage action, 93-2201-9

Will not probated, evidentiary effect and use, restrictions, 91A-3-102

EXAMINATION OF PUBLIC ACCOUNTS

See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit

INDEX

References are to Title and Section numbers

EXAMINERS, STATE BOARD OF

- Allocation to department for administrative purposes, power to hire personnel retained, 82A-207
- Composition of board, 82-1101
- Liquidated claims not to be processed by board, 82-1101
- Record of proceedings, 82-1105

EXCHANGE

- Uniform Commercial Code, applicability, 74-505

EXECUTION

- Compensation under occupational disease act exempt from, 92-1329
- Decedents' estates, execution against estate prohibited, 91A-3-812—See DECEDENTS' ESTATES, Creditors' claims
- Delivery of possession, writ to secure, M. R. Civ. P., Rule 70
- Documents of title covering goods, surrender or injunction required for execution against, 87A-7-603
- Exemptions, liberal laws to be enacted, 1972 Const., XIII, 5
- Game wardens' retirement benefits, exemption from levy, 68-1420
- Judges' retirement benefits, exemption from levy, 93-1126
- Partnership interest, execution against, 93-5811
- Redemption from sale by spouse of judgment debtor, 93-5836
 - redemption by judgment debtor from spouse, 93-5836 (4)
- Sales under execution validated despite defects, 93-5846
- Statutes govern execution, M. R. Civ. P., Rule 69
- Stay of proceedings to enforce judgment, M. R. Civ. P., Rule 62
- Supplementary proceedings, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A
- Teachers' retirement system benefits exempt from execution, 75-6215
- Unit ownership property, application of exemptions to, 67-2341
- Waiver of statutory exemptions in unsecured note not enforceable, 93-5813.1

EXECUTION OF SENTENCE IN CRIMINAL CASES

- See CRIMINAL PROCEDURE, Sentence and judgment, execution of sentence, 95-2301 to 95-2312

EXECUTORS AND ADMINISTRATORS

- See PERSONAL REPRESENTATIVES

EXEMPTIONS FROM EXECUTION

- See EXECUTION

EXONERATION

- Decedents' estates, payment of encumbrance not increase of share of distributee, exception, 91A-3-814
- Specific devise passes subject to security interest without right of exoneration, 91A-2-609

EXPERIMENT STATIONS

- Fertilizer educational and experimental programs, 3-1731
 - assessments allocated for support of program, 3-1730
- Forest and conservation station, reports and disposition of income, 28-304

EXPLOSIVES

- Manufacture, sale or possession for wrongful use as felony, punishment, 94-8-223
 - persons aiding or abetting as principals, 94-8-224
 - possession as presumptive evidence of wrongful use, 94-8-225
- Minor, selling or giving explosives to, punishment, 94-5-609 (1) (a)
- Possession in public place with felonious intent as felony, penalty, 69-1932
 - definition, 69-1931
- Possession of explosives, elements of offense, punishment, 94-6-105
 - timing or detonating device, possession, manufacture or transport for unlawful purpose, punishment, 94-6-105

INDEX

References are to Title and Section numbers

EX POST FACTO

Laws prohibited, 1972 Const., II, 31

EXTRADITION

Issued without fee, 25-102 (4)

F

FACTORS

Lien of factors, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS

FAIRS

County fairs

- capital improvement fund, establishment authorized, 16-1407.1
- interest paid into county general fund, 16-1407.2 (3)
- maximum amount of fund, 16-1407.2 (2)
- purposes of fund, 16-1407.1
- sources of funds, 16-1407.2

Public drawings for attendance prizes or premiums exempt from lottery law, 94-8-302

FAIR TRADE

Cigarette pricing, 51-301 to 51-314—See CIGARETTE SALES

FALSE PRETENSES

See FRAUD

Bad check offenses, 94-6-309

Chain distributor schemes, promotion or sale of participation as criminal offense, punishment, 94-6-308.1

Deceptive practices, acts constituting offense, punishment, 94-6-307

deceptive business practices, punishment, 94-6-308

Defrauding secured creditors, punishment, 94-6-313

Forgery, 94-6-310—See FORGERY

Livestock, illegal branding or altering or obscuring brand as criminal offense, punishment, 94-6-312

Obscuring identity of machine, acts constituting offense, punishment, 94-6-311

FEES

Boiler engineer's license, 69-1512

Clerk of district court, enumeration, 25-232

naturalization fees paid to county treasurer for credit to general fund of county, 25-210

probate proceedings, 25-233

Co-operative associations

amendment of articles, filing, 14-204

articles of incorporation, filing, 14-201

certificate of incorporation, issuance, 14-204

Co-operative marketing associations, filing fees, 14-422

County clerks, enumeration, 25-231

Insurance code, fees collectible under, 40-2726

Jurors' fees, 25-401

Justices of peace, fees collected by

civil actions, 25-301

criminal actions, 25-310

remittance to county treasurer, retention of certain fees authorized, 25-311

Legislative proceedings, fee for receiving one complete set of, 43-902

Recording marks and brands of livestock, 46-609

Rural electric and telephone cooperatives, filing fees, 14-527

Secretary of state, fees collectible by enumerated, 25-102

Water users' associations exempt from payment, exception, 25-110

Witnesses' fees, 25-404

FELLOW SERVANT RULE

Affirmative defense, M. R. Civ. P., Rule 8(c)

INDEX

References are to Title and Section numbers

FELONIES

Definition, 94-2-101 (15)

"Forcible felony" defined, 94-2-101 (17), 94-3-101

Offenses defined outside Criminal Code to be classified, 94-1-105 (2)

Purpose and basis for classification of offenses, 94-1-105 (1)

Time limitation on prosecution, 94-1-106 (2)

FENCES

Gate, failure to close as criminal mischief, punishment, 94-6-102

State highways through high hazard areas of open range, 32-2425.1 to 32-2429

Well or other hole, failure to fence, punishment, 94-8-108

FERTILIZER

See AGRICULTURE, Commercial fertilizers

FIDUCIARIES

Institutional funds management, 86-801 to 86-809—See MANAGEMENT OF INSTITUTIONAL FUNDS

Validation of sales of property, 91-4324 et seq.

Voting of corporate shares, 15-2231

FINE ARTS' COMMISSION

Commission abolished, 44-528—See HISTORICAL SOCIETY OF MONTANA

FINES

Appeal, stay of execution, 95-2406

County school fund, fines paid into, 75-6912

Disposition, 95-2228

juvenile traffic offenders, collections from, 95-2229

Excessive fines prohibited, 1972 Const., II, 22

Execution of, 95-2302

Imposition of, 95-2206

Lien of judgment to pay fine, 95-2208

Remission by governor, 1972 Const., VI, 12

FIREARMS

Assault, presumption of mental state from pointing firearm at another, 94-5-201 (1)
(d)

Bringing armed men into state, elements of offense, punishment, 94-7-504

Concealed weapons, 94-8-210 to 94-8-217—See CONCEALED WEAPONS

Discharge of firearm in city, town or private enclosure, punishment, 94-8-218

Discharging firearm as disorderly conduct, punishment, 94-8-101

Justifiable use of firearm, 94-3-101 to 94-3-112

Machine guns, 94-8-201 to 94-8-209

definitions, 94-8-201

inspection of manufacturer's stock and register, failure to produce, punishment, 94-8-207

possession or use for unlawful purpose, 94-8-202 to 94-8-206

"crime of violence" defined, 94-8-201

exceptions to application of law, 94-8-206

offensive or aggressive purpose, punishment, 94-8-203

presumption, 94-8-204

perpetration or attempted perpetration of crime of violence, punishment, 94-8-202

presence of gun in room, boat, or vehicle as evidence of possession or use by each occupant, 94-8-205

registration required, procedure, punishment for failure to register, 94-8-207, 94-8-208

manufacturers' register, 94-8-207

possession or acquisition, presumption from failure to register, 94-8-208

uniform interpretation and construction of law, 94-8-209

Minors' possession or use without supervision unlawful, 94-8-221

violation by parent or guardian as misdemeanor, prosecution mandatory, 94-8-222

INDEX

References are to Title and Section numbers

FIREARMS (Continued)

- Rifles and shotguns, purchase in contiguous states authorized, restrictions, 94-8-219
- residents of contiguous states purchasing in Montana, restrictions, 94-8-220
- Right to bear arms, concealed weapons prohibited, 1972 Const., II, 12
- Silencers, manufacture, sale, possession or transport for wrongful use as felony, punishment, 94-8-223
- persons aiding or abetting as principals, punishment, 94-8-224
- presumption arising from possession, 94-8-225

FIRE DEPARTMENTS

- Group insurance for firemen, payment of premium, 11-1024.1
- special funding, tax levy authorized, 11-1024.2
- Relief associations, audit of accounts of, 82-4516 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit
- Volunteer departments, audit of accounts, 82-4516 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit

FIRE DISTRICTS

- Audit of accounts, 82-4516 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit
- County attorney to act as counsel, 16-3101

FIRE ESCAPES AND ALARMS

- Fire extinguishers, alarm or extinguishing systems, certificate of registration from fire marshal required for servicing or installing, 82-1202.1
- Permits for construction outside incorporated municipalities, fees, 69-1808
- Plans of construction submitted to state fire marshal, 69-1808

FIRE EXTINGUISHERS

- Prohibited liquid contents without fire marshal approval, 69-1807

FIRE HAZARDS

- Hunting and fishing, closing of area to, 26-345
- Proceedings for abatement, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
- Sawmill waste, 28-119

FIRE MARSHAL, STATE

- Abolition of office and transfer of functions, 82A-1202
- Acting fire marshal, 82-1208
- Advisory commissions, appointment, members, 82-1201
- Appointment and qualifications, 82-1201
- Employees, appointment of assistants and clerical employees, 82-1208
- Examination of buildings, authority to enter, 82-1218
- Fire extinguishers, fire alarm or extinguishing systems, certificate of registration from fire marshal required for servicing or installing, 82-1202.1 (4)
- Fish and game wardens as ex officio fire wardens, 26-110.1
- Investigation of fires, 82-1209
- Powers, 82-1202
- Rules and regulations, promulgation of, 82-1202
- rules to be reasonable, 82-1202.1
- standards of fire protection adopted, 82-1202.1
- violation a misdemeanor, 82-1202.1
- Special deputy fire marshals, 82-1208

FIRE PREVENTION ADVISORY COMMISSION

- Abolition of commission, 82A-1208
- Appointment by commissioner of insurance, members, 82-1201

FIREWORKS

- Permissible fireworks, 69-2701
- Sale by minors unlawful, 69-2701

INDEX

References are to Title and Section numbers

FISH AND GAME

- Acquisition, importation and propagation of fish, game, game birds and fur-bearing animals authorized, 26-104.4
- Agents for selling licenses, compensation, inspection of accounts, 26-222
- Aquatic insects, commercial exportation prohibited, 26-708
- Archery regulations governing use of livestock and vehicles, 26-104.3
- Big-game hunting
 - dogs, use in hunting mountain lion, 26-303.5
 - policy of state, 26-303.1
 - private property, permission required for hunting on, 26-303.3
 - violation of provisions as misdemeanor, 26-303.4
- Checking stations for inspection of licenses, animals and fish authorized, 26-137
- licenses, game or fish to be produced for inspection, 26-138
- Clothing worn by big game hunters and guides, 26-302
 - violation as misdemeanor, penalty, 26-303
- Commission and functions continued, 82A-2004
 - definition, 26-101.1
 - director as secretary, 26-106
 - head of department, 82A-2001
 - officers of commission, 26-103
 - plans for construction projects, 26-119
 - principal offices, 26-103
- Construction projects affecting fish and game
 - alternative plans and recommendations by fish and game commission, 26-1504
 - arbitration of disputes, 26-1505
 - assistance by fish and game commission in preparing plans, 26-1503
 - emergency conditions, exception to requirements, 26-1506
 - enforcement proceedings by commission, 26-1509
 - federal actions, objections to, 26-1508
 - finances deposited in earmarked revenue fund for use of department, 26-1509
 - insufficiency of plans, notice to responsible agency, 26-1503
 - investigation of plans by fish and game commission, 26-1503
 - irrigation projects exempt from requirements, 26-1507
 - notice to be given to fish and game commission, 26-1502
 - penalty for violation, restoration of damaged stream, 26-1509
 - plans and specifications to be furnished fish and game commission, 26-1502
 - policy of state, 26-1501
 - refusal by applicant to modify plans, 26-1505
 - vested water rights preserved, 26-1506
- Contests based on size of animals unlawful, 26-811
- Co-operative agreements for research, training and other projects authorized, 26-104.7
- Definitions, 26-101.1, 26-201
- Department of fish and game created, 82A-2001
 - aerial tramway safety board, department substituted for, 82A-2005
 - commission as head of department, 82A-2001
 - composition, qualifications of members, designation as quasi-judicial board, 82A-2004
 - definition, 26-101.1
 - director, appointment, qualifications, term, removal, 82A-2003
 - fish hatcheries, powers and duties in respect to, 26-117
 - functions of department, 82A-2001.1
 - outfitters' council, creation, composition, qualifications and terms of members, allocation to department, 82A-2005
 - passenger tramway safety board, department substituted for, 82A-2005
- Director as secretary of commission, powers, duties, compensation, 26-106
- Districts, division of state into, 26-104.3
 - opening and closing of seasons in districts, 26-104.3 (3), (4)
- Educational and biological programs authorized, 26-104.7
- Endangered species, 26-1801 to 26-1809
 - citation of act, 26-1801
 - construction of act, 26-1809
 - definition of terms, 26-1802

INDEX

References are to Title and Section numbers

FISH AND GAME (Continued)

Endangered species (Continued)

- human health, removal, capture or destruction of species authorized for protection of, permit required, 26-1806
- imported wildlife, 26-1809
- legislative policy, 26-1803
- list of endangered species to be recommended by commission to legislature, 26-1805 (1)
 - modification of list, effect, 26-1805 (4)
 - review of list by department, 26-1805 (2)
 - unlawful to take species on state or federal list, 26-1805 (3)
- management measures to be determined upon investigation by department, 26-1804
 - regulations to be issued by department, 26-1804 (1)
- officers authorized to enforce act, 26-1808
- programs for management of species to be established by director, 26-1806
 - acquisition of land or aquatic habitat authorized, 26-1806 (1)
 - agreements with federal agencies, political subdivisions and private persons, 26-1806 (2)
 - co-ordination with other programs by governor, 26-1806 (3)
- property protection, removal, capture or destruction of species authorized, permit required, 26-1806 (5)
- regulations of commission, 26-1807
 - limitations established by regulations, 26-1804
- scientific, zoological or educational purposes, taking of species for, 26-1806 (4)
- severability of provisions, 26-1809
- unlawful acts, 26-1804
- violation as misdemeanor, punishment for first and subsequent offenses, 26-1808
- wildlife seized, forfeiture to state, disposition, 26-1808 (4)

Exemptions from general provisions, 26-215

Federal aid moneys, deposit and use, 26-121

Fire danger, closing area to hunting and fishing authorized, 26-345

request for closure by county commissioners, 26-345 (2)

Fish

- caged fish, placement in public waters, 26-813, 26-814
- methods of taking, 26-332
- minors not required to have license, 26-215
- reciprocal privileges granted to licensees of bordering states, 26-225
 - bodies of water covered by reciprocal privileges, 26-227
 - devices and equipment used under reciprocal privilege, 26-226
 - rules and regulations, 26-228
 - violations as misdemeanor, 26-228
- restrictions concerning possession and sale, 26-332

Fish hatcheries, game farms and other property, use of funds for construction, maintenance and operation authorized, 26-104.4

Fishing reservoirs, rules and regulations concerning health, safety and protection, 26-104

Fish ladders to be installed and maintained at expense of owners of dam or other obstruction, 26-104.5

Furbearing animals, closed and open season, 26-321

Gates of the Mountain game preserve, 26-1128

Grizzly bear

- policy declaration, 26-307.2
- regulatory powers of commission, 26-307.3
- scientific purposes, delivery of parts of grizzly bear to commission for, 26-307
- waiting period for new license after taking grizzly bear, 26-202.2

Guides, 26-908 to 26-922—See Outfitters and guides, below

Irrigation ditches, screens or wheels to be installed to prevent fish entering, 26-104.5

Jackrabbits, hunting with artificial light, 26-215

Juveniles under thirteen years of age, fishing by, 26-104.3

Landowner's restricted liability to gratuitous licensee for hunting or fishing, 67-808

Lands and waters, acquisition and sale by commission, procedure, 26-104.6

installment contract method authorized, limitations, 26-104.6 (3)

INDEX

References are to Title and Section numbers

FISH AND GAME (Continued)

Lands and waters (Continued)

regulation of use of lands accessible to public authorized, commission rules, 26-104.9

Licenses

bear licenses, issuance to nonresidents, 26-202.5

big game, special licenses, 26-202.2

information to be included in license, 26-212.1

classifications, 26-202.1

exceptions, 26-202.1

falconry licenses, 26-501.1

fees, 26-202.1

disposition and use of fees, 26-121

use for purchase of recreational facilities, 26-234

license agents, compensation, 26-222

littering, forfeiture of license for, 26-812

minors not required to have fishing license, 26-215

nonresident one day fishing license, 26-202.6

outfitters and guides, 26-914 to 26-920—See Outfitters and guides, below

person sixty-two years or older entitled to fish and hunt with conservation

license, fee, 26-202.1 (16) (a)

powers of holders of, 26-202.1

predatory hawks and owls, license not required for, 26-501.1

predatory mammals, license not required for, 26-215

"resident" defined for purposes of, 26-202.3

special deer license, fee for holder of other licenses, 26-202.1 (21) (b)

special elk permits, power of commission, 26-202.7

applications exceeding quota, drawing for permits, preferences, 26-202.1 (16) (h)

special license for elk, limit upon subsequent licensing, 26-202.2

fee for holder of other licenses, 26-202.1 (21) (a)

wildlife conservation license

application, 26-230

expiration, 26-230

false statement, subscription to, 26-232

fees, 26-230

deposit of, 26-233

hunting, fishing or trapping licenses, unlawful sale of, 26-231

hunting, fishing or trapping license tags, affixing to or recording on wildlife

conservation license, 26-230

required to obtain hunting, fishing or trapping license, 26-229

veterans and state institutional residents, fishing without license, permit required, 26-202.1 (16) (b)

Menageries, roadside

definitions, 26-1205

enforcement provisions, 26-1211

disposition of fines, bonds, penalties and fees, 26-1212

permit to obtain additional animals, 26-1208

permit to operate, 26-1206, 26-1207

permit not a commercial game propagating permit, 26-1209

revocation after inspection, 26-1210

transferring permit, 26-1207

Migratory bird reservations, consent to acquisition by United States, 83-113

Migratory game birds, exclusion from law providing permits for breeding game birds, 26-1201

Moneys received by commission, disposition and use, 26-121

Motorboat regulations—See MOTORBOATS

Motor-driven vehicle, restrictions on use, 26-301

Mountain lion as game animal, 26-201

dogs, use in hunting, 26-303.5

Nongame certificates issued by commission, purpose, fee, use of proceeds, 26-202.8

Nurseries and rearing ponds for planting, propagation and rearing of fry, 26-104.5

INDEX

References are to Title and Section numbers

FISH AND GAME (Continued)

Outdoor recreational resources development, 62-401 to 62-403—See OUTDOOR RECREATIONAL RESOURCES

Outfitters and guides

- advisory council, election, powers and duties, 26-912
- definition of terms, 26-908
- enforcement of requirements, 26-921
- license required for outfitter or guide, 26-914
 - amendment of license to show beneficial ownership, 26-916 (4), (5)
 - application for license, contents, 26-915
 - examination of licensees, 26-915
 - expiration of license, 26-916 (6)
 - fees for licenses, 26-915
 - deposit of fees, 26-917
 - kinds of licenses issued, 26-916
 - limit on number of licenses held by one person, 26-916 (5)
 - qualifications of licensees, 26-915
 - revocation or suspension of license, or right to apply for license, grounds, 26-918
 - appeal to district court, 26-920
 - procedure, 26-919
- nonresident to be accompanied by licensed outfitter or guide, exceptions, 26-909
- penalty for violations, 26-922
- powers and duties of department, 26-911
- responsibility for violations, 26-906
- rules and regulations, 26-913
- unlicensed outfitters and guides, employment prohibited, 26-906
- waiver of guide requirements for nonresident hunter, 26-909

Physical alteration or modification of stream, written consent of supervisors required, 26-1512, 26-1514—See CONSERVATION, Natural Streambed and Land Preservation Act

Possession of illegally taken fish or game, misdemeanor, 26-701

Predatory animals, use of appropriated funds for eradication, 26-104.4

Predatory mammals, taking permitted without license, 26-215

Provisions not applicable to department, 26-301

Raptors, protection and conservation, 26-501.1

Refuges for fish and game, creation and maintenance authorized, 26-104.8

Regulations and orders by commission, 26-301

Removal from state of illegally taken game, misdemeanor, 26-701

Rules governing use of lands, reservoirs and lakes authorized, 26-104.9

Salmonid fish and eggs

- importation unlawful unless certified free of infectious organisms, 26-1701
- cargo and vehicle denied right to proceed, 26-1705
- certification unnecessary if organisms dead, 26-1702
- enforcement at ports of entry and checking stations, 26-1705
- misdemeanor provision, 26-1705
- rule-making power of commission, 26-1704

Seasons, bag limits and declaration of open areas, authority of commission concerning, 26-104, 26-104.3

Shooting preserves

- amount of game recoverable under license or permit, 26-1605
- area covered by preserves, 26-1602
- classes of licenses and permits, 26-1612
- fees for licenses and permits, 26-1604
- game which may be hunted on preserve, 26-1603
- inspections of preserves by commission, 26-1614
- issuance of licenses or permits authorized for preserves, 26-1601
- license required of shooters, 26-1611
- limits established by preserve operators, 26-1606
- lists of licenses and permits maintained by commission, 26-1612
- location of preserves, 26-1602
- posting of boundaries required, 26-1602
- records required of operators, 26-1609

INDEX

References are to Title and Section numbers

FISH AND GAME (Continued)

Shooting preserves (Continued)

- registration of shooters and game taken, 26-1609
- revocation of license or permit, 26-1613
- rules and regulations, 26-1601
- season when hunting permitted on preserves, 26-1607
- size of preserves, 26-1602
- species of game to be hunted on preserve, 26-1603
- stocking of preserve required of operator, 26-1603
- tagging of game taken, 26-1608
- wild game, hunting on preserve permitted, 26-1610

Snare trap, use lawful, exception, 26-504

Snowmobile, use to drive game prohibited, 53-1020

Special elk permits, power of commission, 26-202.7

- applications exceeding quota, drawing for permits, preferences, 26-202.1 (16) (h)

Special licenses, 26-202.1

- rules and regulations by commission authorized, 26-202.1 (21) (c)

Sturgeon as game fish, 26-201

Taxidermist

- license, 26-907
- records required to be kept, 26-907

Wardens for enforcement of laws

- appointment of wardens, 26-107
- definition, 26-101.1
- duties of wardens, 26-107
- ex officio fish and game wardens, 26-114
- littering, 32-4410
- oath of office, 26-111
- protection of private property, 26-110.1
- powers, 26-110.2
- qualifications, powers and duties, 26-107, 26-110
- retirement system
 - account in agency fund, establishment, 68-1408
 - contributions paid into account, 68-1405
 - control and investment of moneys in account, 68-1405
 - actuarial investigations and valuations, 68-1406
 - beneficiary, designation and changes, 68-1421
 - contributions to system
 - members, contributions by, 68-1409
 - payment into retirement account, 68-1405
 - state contributions, 68-1410
 - death benefits, 68-1418
 - employment, death attributable to, 68-1417
- deferred compensation programs, benefits unaffected by, 68-2706—See DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES
- definition of terms, 68-1401
 - "state game warden," 68-1402
- disability retirement allowance, 68-1414
- dormant accounts, transfer to employer's account, 68-1428
- effective date for commencement of system, 68-1407
- errors, correction, 68-1423
- exemption of benefits from taxation or process, 68-1420
- false or fraudulent statements, penalty, 68-1423
- game wardens' retirement board, existence and composition, 82A-210.1
- involuntary retirement allowance, 68-1415
- membership in system, 68-1407
- military service, credit for, 68-1422
- monthly payment of allowances, 68-1419
- optional means of payment of benefits, 68-1427
- prior service credit, 68-1407
- public employees' retirement act inapplicable to game wardens, 68-1429
- refund of contributions on resignation or discharge, 68-1416
- retirement board, existence, composition, 82A-210.1

INDEX

References are to Title and Section numbers

FISH AND GAME (Continued)

- Wardens for enforcement of laws (Continued)
 - retirement system (Continued)
 - rules and regulations for administration of system, 68-1406
 - service retirement, 68-1411
 - allowance on retirement, 68-1413
 - subrogation of state to claims against third persons, 68-1425
 - suspension or revocation of benefits, grounds, 68-1424
 - voluntary retirement on reduced allowance, 68-1412
 - workmen's compensation, benefits supplemental to, 68-1426
- search, seizure, arrest and enforcement powers, 26-110.3
- Waste of game animals prohibited, 26-307
- Waterfowl foods, use of funds to introduce, 26-104.4
- Wild buffalo protected, 26-301.1
- Wild turkey
 - attaching of tag to turkey taken, 26-511
 - fee for tag, 26-510
 - tags for, issuing, 26-510
 - violation of act concerning, misdemeanor, 26-512

FIXTURES

- Ownership of fixtures by landowner, exceptions, 67-1301
- Security interests in fixtures, priority between, 87A-9-313

FLAG

- Desecration as criminal offense, punishment, 94-7-502

FLOOD CONTROL AND WATER CONSERVATION

- County and municipal participation in projects
 - acceptance of federal, state or other aid, 89-3304
 - acquisition and condemnation of property, 89-3303
 - alternative method of organization of projects, amendment or repeal of provisions limited, 89-3314
 - assessment of property benefited, levy and collection, 89-3309
 - authority for participation, 89-3301
 - bond issues by counties or municipalities, 89-3312
 - charges for services or facilities, authority of counties or municipalities, 89-3309.1
 - contributions to right of way costs, acceptance, 89-3307
 - costs, contemplated apportionment, 89-3305
 - direction of project by state or federal government, 89-3306
 - division of work into parts, 89-3311
 - highway property, contracts for use, 89-3310
 - indebtedness, contracting by counties or municipalities, 89-3312
 - maintenance of works, counties and municipalities may assume, 89-3307
 - public purpose of activities declared, 89-3302
 - railroad property, contracts for use, 89-3310
 - separate proceedings for parts of work, 89-3311
 - street or road fund, allocation for costs, 89-3308
 - supplementary nature of powers, 89-3313
 - tax assessments for payment of bonds, 89-3312
 - works with respect to which county or municipality may participate, 89-3301
- Floodway management and regulation
 - artificial obstructions as nuisances, unlawful establishment, 89-3505, 89-3506
 - penalties for violation, 89-3513
 - definition of terms, 89-3503
 - encroachment lines, establishment, 89-3504
 - establishment of artificial obstructions or nonconforming uses unlawful, penalties, 89-3513
 - exempt obstructions where drainage area is small, 89-3510
 - immunity of state, 89-3514
 - land-use regulations of political subdivisions, 89-3504
 - legislative findings on flooding of land resources, 89-3501

INDEX

References are to Title and Section numbers

FLOOD CONTROL AND WATER CONSERVATION (Continued)

- Floodway management and regulation (Continued)
 - nonconforming uses as nuisances, prohibited uses, 89-3505, 89-3506
 - penalties for violation, 89-3513
 - nuisances, artificial obstructions and nonconforming uses as, 89-3505
 - open-space uses permitted, 89-3506
 - orders and rules of board, notice and hearing, judicial remedy, 89-3511
 - remedies or powers not exclusive, 89-3515
 - penalties for violation, 89-3513
 - permits for obstructions, application, factors considered, fees, 89-3507
 - effect of permit construed as additional requirement to other laws, 89-3514
 - powers and duties of department, 89-3508
 - program for delineation of floodways, 89-3504
 - purposes of act, 89-3502
 - removal of obstructions, powers and duties of department, 89-3508
 - entry of lands or waters authorized, 89-3509
 - floodway obstruction removal fund, 89-3512
 - investigation of natural or artificial obstructions, authority of board, 89-3509
 - remedies or powers not exclusive, 89-3515
 - United States regulatory rights, 89-3514
- Junk vehicles, use along banks of stream for flood control prohibited, penalty, 69-6811, 69-6812

FLOUR

- Vitamin and mineral contents required, 27-802
 - definition of terms, 27-801
 - enforcement procedures, 27-804
 - modification of requirements, 27-804
 - penalties for violations, 27-805

FOOD AND DRUGS

- Beef or veal, persons exempted from having meat inspected, stamped or being licensed, 46-504
- Board of food distributors abolished and functions transferred, 82A-404
- Bread, vitamins and minerals required, 27-801 to 27-805—See BREAD
- Dairy products, 3-2488 to 3-24-137—See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products
- Flour, vitamins and minerals required, 27-801 to 27-805—See FLOUR
- Food, Drug and Cosmetic Act, 27-701 to 27-723
 - adulterated or misbranded articles
 - additives to conform to regulations permitted, 27-713
 - condemnation proceedings, destruction of article, 27-706
 - correction of defect, bond of claimant, 27-706
 - definitions, 27-710, 27-711, 27-714, 27-715, 27-718, 27-719
 - detention or embargo of article, 27-706
 - nuisance, abatement of, 27-706
 - prohibited acts, penalties, 27-703, 27-705
 - citation of act, 27-701
 - cosmetic
 - adulterated cosmetic defined, 27-718
 - adulteration or misbranding, see adulterated or misbranded articles above
 - definition, 27-702
 - misbranded cosmetic defined, 27-719
 - definition of terms, 27-702
 - drug or device
 - adulterated drug or device defined, 27-714
 - adulteration or misbranding, see adulterated or misbranded articles above
 - curative properties, representation of, false advertising, 27-720
 - "device" defined, 27-702
 - dispensing of prescription drugs, 27-716
 - labeling requirements, 27-716
 - "drug" defined, 27-702

INDEX

References are to Title and Section numbers

FOOD AND DRUGS (Continued)

Food, Drug and Cosmetic Act (Continued)

drug or device (Continued)

false advertising prohibited, 27-703, 27-705, 27-720

misbranded drug or device defined, 27-715, 27-716

narcotic drugs, law governing, 27-716

new drug, dispensing of

application required, exceptions, 27-717

labeling proposed, 27-717

"new drug" defined, 27-702

tested for safe use, 27-717

simulating mark or label prohibited, 27-703

substituting drugs without consent prohibited, 27-703

examination of samples by department for violations of act, 27-722

false advertising prohibited, 27-703

criminal penalties, exemptions, 27-705

what deemed false advertising, 27-720

food

adulterated food defined, 27-710

adulteration or misbranding, see adulterated or misbranded articles above

definition, 27-702

misbranded food defined, 27-711

permits for manufacture, processing and packing

conditions governing, 27-712

inspection of premises of permittee, 27-712

suspension and reinstatement, 27-712

standards, regulations establishing, 27-709

unwholesome food, condemnation or destruction, 27-706

hearings under act, conduct of, 27-721

inspection of building and premises by department, 27-722

labeling requirement specified by regulation, 27-721

distribution of misbranded products prohibited, 27-703

honey, labeling requirements, 27-703 (r)

prohibited acts, enumeration, 27-703

criminal penalties, 27-705

restraining by injunction, 27-704

regulations of department

adoption, amendment, or repeal, procedure, 27-713, 27-721

factors considered, 27-713

hearings, when required, 27-721

effective date, 27-721

food and color additives, use of, 27-713

food standards, 27-709

notice of proposal to promulgate regulations, 27-721

reports of department, 27-723

samples or specimens for analysis, securing by department, 27-722

violations of act, penalties, 27-705

examination of samples to determine violations, 27-722

exemption of advertising media, 27-705

minor violations, prosecution not required, warning notice, 27-708

prosecution instituted without delay, 27-707

reliance on guaranty or undertaking as a defense, 27-705

right of defendant to be heard by department of health, 27-707

summary reports by department, 27-723

Food service establishments

definition of terms, 27-612

diseased person not to handle food or work in establishment, 27-619

enforcement of act by state board, agreements with other agencies, 27-620

frozen food plants

definition, 27-612

game, beef or veal not properly stamped or tagged, operator to require signed

declaration, 27-624

lien for rental on compartments, 27-623

loss of food, liability for, 27-622

INDEX

References are to Title and Section numbers

FOOD AND DRUGS (Continued)

Food service establishments (Continued)

frozen food plants (Continued)

- owners and operators not responsible for violation of game laws by persons who rent lockers, 27-624
- requirements on receipt of game and beef carcasses, 27-624
- inspections by health officers and sanitarians, reports to department, 27-621
- payments to local boards of health for inspection services, 27-614
- license from department of health and environmental sciences required, 27-613
 - application for license, form and contents, 27-614
 - denial or cancellation of license, grounds, procedure, 27-615
 - expiration date, 27-613
 - granted as a matter of right, 27-613
 - license fee, 27-614
 - multiple-type establishment, 27-613
 - partial denial or cancellation, 27-615
 - nontransferable, 27-613
 - publicly owned establishments exempt, 27-613
- regulation of establishments required to protect public health, 27-611
- rules adopted by department, 27-620
 - violations, penalties, 27-625
- samples of food furnished by licensees for analysis, 27-621
- violations of act, penalties, 27-625
 - injunctive relief for violations, 27-615.2

Imported meat, labeling required, 27-318 to 27-320—See MEAT

Livestock sanitation and control of communicable disease, rules and regulations of department of livestock, 46-208

Medical practitioners dealing in drugs

- definition of terms, 27-901
- dispensing of drugs by practitioners, restrictions on, 27-903
- drug companies and practitioners, unlawful dealings between, 27-902
- enforcement proceedings by county attorneys, 27-905
- pharmacies and practitioners, unlawful dealings between, 27-904
- existing ownership of pharmacy exempt, 27-906

FORCIBLE ENTRY AND DETAINER

Married person as defendant, 93-9706

FORECLOSURE

Attorney fee to be allowed by court, 93-8613

Deficiency judgment, docketing, 93-6001

Parties to foreclosure action, 93-6001

Power of sale contained in mortgage, alternatives available, 93-6004

- advertising required for sale under power, 93-6005

- attorney fees allowed to mortgagee, 93-6007

- redemption rights of mortgagor, 93-6006

Proceeds of sale, application, 93-6001

Sale of property directed by court, 93-6001

FOREIGN LAW

Reasonable written notice of intent to raise issue concerning law of foreign country necessary, M. R. Civ. P., Rule 44.1

FORESTS AND FORESTRY

Board of natural resources and conservation powers, 28-105

Bond of person engaged in cutting of forest products as to reduction or management of fire hazard, 28-404

Department of natural resources and conservation, duties, 81-1411

- co-operation with owners and lessees on fire protection and conservation, 81-1409

- firewardens, appointment, duties, 81-1412

- powers of firewardens, 81-1413

- protection of state timber as duty of department and firewardens, 81-1415

Enjoining violations concerning disposal of slash, 28-407

INDEX

References are to Title and Section numbers

FORESTS AND FORESTRY (Continued)

- Experiment station established in forestry school of university of Montana, 28-301
 - name of station, 28-301
 - purposes, 28-303
 - reports and disposition of income, 28-304
- Fire protection
 - actual owner of land or timber responsible for compliance with chapter, 28-104
 - (1)
 - board of natural resources and conservation, powers generally, 28-105
 - hearings before board upon request of owners of classified forest land, 28-129
 - classification of forest land for protection and assessment purposes, 28-109
 - compliance with protection requirements, what constitutes, 28-110
 - contract for protection by department authorized, 28-106 (2)
 - co-operation with public agencies in development, protection and conservation of forest and water resources, 28-106 (3)
 - costs of protection, determination and assessment against land, 28-111
 - county commissioners to co-operate with department, 28-122
 - definition of terms, 28-103
 - department of natural resources and conservation, powers and duties generally, 28-106
 - department of state lands to co-operate with department, 28-122
 - enforcement of rules and regulations, 28-125
 - ex officio firewardens, powers, 28-125
 - forest fire protection districts, creation authorized, hearing required, notice, approval by owners, 28-105 (2)
 - establishment of boundaries by board, 28-110
 - forest land areas classified by board for conservation and fire protection, change in classification authorized, 28-105 (1)
 - lands to which chapter applicable, 28-104
 - moneys available for fire protection, 28-123
 - deposit and payment of moneys, 28-124
 - penalty for violation, 28-127
 - plan for fire protection, preparation, 28-111
 - purpose of chapter, 28-101.1
 - rules for enforcing chapter, adoption by board authorized, 28-105 (3)
 - state timberlands, departmental duties, 81-1411—See State forests, below
- Insect pests and tree diseases, policy for control of, 28-204
 - definition of terms, 28-205
 - zone of infestation declared by department, approval of board required, 28-206
 - "department" defined, 28-205
 - eradication of infestation and disease within zone, 28-206 (2)
 - zone abolished upon completion of control work, 28-207
- Portable sawmills located on forest lands, license required for operation, 28-802
 - application for license, fee, 28-803
 - definition of terms, 28-801
 - issuance of license, term, 28-804
 - revocation, grounds, 28-805
 - violation as misdemeanor, penalty, 28-806
- Reduction or management of fire hazards, 28-404
- Sawmills on forest land, license application and fee, 81-1502
- Sawmill waste as fire hazard, 28-119
- Slash and debris
 - certificate of clearance, 28-412
 - contracts for reduction or management of fire hazards, department may enter into, 28-410
 - contracts with forest protective agencies, 28-411
 - department of natural resources and conservation, supervision under rules of board, 28-408
 - disposal of slash, 28-407
 - hazard reduction agreement, purchaser of forest products to insure compliance, 28-406
 - injunctions where slash and debris not disposed of properly, 28-407
 - methods of reducing hazards, 28-411

INDEX

References are to Title and Section numbers

FORESTS AND FORESTRY (Continued)

Slash and debris (Continued)

- modern and progressive forest practices to be employed, 28-408
- modern forest practices to be used, 28-408
- reduction, 28-405
- reduction or management of fire hazard, 28-404
- slash and debris along right-of-way, 28-405
- violation of provisions, penalty, 28-405

State forests

- conservation appropriations and allotments, receipt by state treasurer, 81-1410
- fire protection duties of department, 81-1411
 - co-operation with owner and lessees in fire protection and conservation, 81-1409
- firewardens, appointment, 81-1412
- powers of firewardens, 81-1413
- protection of timber as duty of department and firewardens, 81-1415
- sale of timber, supervision and scaling by state forester, 81-1408

State lands in general, sale of timber from, 81-1601

Transportation of coniferous trees, bill of sale required, 28-701

FORFEITURES

Bail, forfeiture, procedure, disposition of judgment and execution, 95-1116, 95-1117

Disposition of fines and forfeitures, 95-2228

- juvenile traffic offenders, fines collected from, 95-2229

Vehicles used in transporting stolen livestock, 94-35-204, redes. 46-3005

FORGERY

Acts constituting offense, 94-6-310 (1)

"Document or other object capable of being used to defraud" defined, 94-6-310 (3)

Punishment, 94-6-310 (4)

- forgery as part of common scheme, 94-6-310 (4)

"Purpose to defraud" defined, 94-6-310 (2)

FOUNDATIONS

Charitable trusts treated as foundation or split-interest trust under federal tax laws, prohibited acts, 86-707 (1)

- amendment of trust instrument terminating tax treatment, 86-707 (2)

Organized under Nonprofit Corporation Act, compliance with federal tax laws required, 15-2398

FRATERNAL BENEFIT SOCIETIES

See INSURANCE, Fraternal benefit societies, 40-5301 to 40-5359

FRAUD

Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)

- circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)

Brace gambling games or apparatus, use prohibited, punishment, 94-8-406

Chain distributor schemes, promoting or selling as criminal offense, punishment, 94-6-308.1—See CHAIN DISTRIBUTOR SCHEMES

Confidence game or bunco prohibited, punishment, 94-8-406

Deceptive practices constituting criminal offenses, punishment, 94-6-307

- deceptive business practices, punishment, 94-6-308

Defrauding secured creditors as criminal offense, punishment, 94-6-313

- "security interest" defined, 94-6-313 (2)

Falsification to mislead public servant as criminal offense, punishment, 94-7-204

Forgery, 94-6-310—See FORGERY

Statute of frauds, 13-606—See STATUTE OF FRAUDS

Uniform Commercial Code supplemented by general provisions of law, 87A-1-103

Uniform Probate Code, remedies of persons injured by fraud, 91A-1-106

INDEX

References are to Title and Section numbers.

FRAUDULENT CONVEYANCES

Decedents' estates, personal representative recovering property fraudulently transferred, 91A-3-709

Defrauding secured creditors as criminal offense, punishment, 94-6-313

FUNERAL DIRECTORS

Licensing requirements, 66-2701 to 66-2717—See MORTICIANS AND FUNERAL DIRECTORS

FUNGICIDES

See PESTICIDES, 27-213 to 27-245

G

GALEN STATE HOSPITAL

See also STATE INSTITUTIONS

Alcoholism services center located at hospital, functions, admittance and discharge procedures, definitions, 80-1705

Cost of support, payment by resident or responsible person, 80-1601 to 80-1604

Industrial activities permitted, 80-1501 to 80-1503

Juvenile reception and evaluation center, committal, duties, transportation provided, 80-1704

Location of hospital, 80-1701

Management and control of hospital by department of institutions, 80-1401 et seq.

Purposes of hospital, 80-1701

Superintendent, qualifications, 80-1702

Transfer of patients from center for the aged, 80-2502

Transfer of patients to mental institutions, 80-1703

Tuberculosis treatment facilities to be maintained by hospital, 69-4317
charges for care and treatment of patients, 69-4316

GAMBLING

Aiding or abetting unlawful, offender deemed principal, 94-8-425

Arrest of persons in possession or control of apparatus or premises, duty of officers, 94-8-410

Bingo and raffles

cash basis, play restricted to, credit or credit devices prohibited, 62-724
action on gambling debt not maintainable, 62-724 (2)

cheating unlawful, 62-725

county attorney to prosecute violations, 62-722

definition of terms, 62-716

enforcement by peace officers, 62-722

exemption from prior law, 62-726

licensing by counties, cities or towns authorized, 62-719 (1)
annual fee, 62-719 (2)

license as revocable privilege, 62-719 (3)

regulations established by local governing body, required contents, 62-720

minors not to participate, 62-721

physical presence of player required for bingo, 62-717

raffles, restrictions on, 62-717, 62-718

drawings, time for, 62-718

events and participants to be within geographic confines of state, 62-717

title of law, 62-715

violation as misdemeanor, penalty, 62-723

Brace games or apparatus, use prohibited, punishment, 94-8-406

Breaking and entering gambling places by officers authorized, 94-8-413

Bribes or payments, acceptance to protect or license offenders as felony, 94-8-417

Building used for gambling, avoidance of lease by lessor, 94-8-422

Bunco games prohibited, punishment, 94-8-406

Card games

authorized card games, 62-703 (2)

"authorized card game" defined, 62-702

INDEX

References are to Title and Section numbers

GAMBLING (Continued)

Card games (Continued)

- "card game" defined, 62-702 (2)
- cash basis for play required, credit or use of credit devices prohibited, 62-706
- action on gambling debt not maintainable, 62-706 (2)
- cheating prohibited, 62-710
- county attorney to prosecute violations, 62-711
- definition of terms, 62-702
- enforcement of provisions by peace officers, 62-711
- licensing of games by counties, cities or towns authorized, 62-707, 62-708
 - fee for license, 62-707 (2)
 - license as revocable privilege, 62-707 (3)
 - regulations by local governing bodies, required contents, 62-708
 - unlicensed games within limits of local governing unit prohibited, 62-707 (1)
- minors not to participate in games, 62-709
- prior laws not superseded remain in effect, 62-714
- prizes, amount limited, combining games prohibited, 62-704
- rake-off approved, manner of taking, 62-705
- rules of play, contents, posting, 62-705
- title of law, 62-701
- unauthorized card games prohibited, 62-703 (1)
- venue of actions involving violations, 62-713
- violation as misdemeanor, penalty, 62-712
- Confidence games prohibited, punishment, 94-8-406
- Destruction of seized apparatus and equipment, duty of magistrate, 94-8-411
- Effective date of act, 94-8-427
- Enforcement of laws**
 - law enforcement officials, duty to prosecute violations, removal from office for neglect or refusal, 94-8-414
 - mayor's duty to enforce law, 94-8-415
 - neglect of duty by officers, punishment, forfeiture of office, 94-8-416
- Evidence, retention of seized apparatus for trial, 94-8-411
- Games prohibited, punishment for violation, 94-8-401
- Lessor of gambling premises treated as principal, 94-8-422
- Licensing of games for amusement or business trade stimulators, 94-8-401
 - application for license, expiration, 94-8-402
 - fee for license, disposition, 94-8-401, 94-8-402
 - religious, fraternal or charitable organizations exempt, 94-8-403
- Loaded dice, use prohibited, punishment, 94-8-406
- Losses recoverable in civil action, procedure, 94-8-418 to 94-8-421
 - dependent person bringing action, time for, amount recoverable, 94-8-419
 - exemplary damages and costs recoverable, 94-8-418
 - interrogatories to persons liable, 94-8-421
 - persons liable, 94-8-418
 - pleadings, 94-8-420
 - repayment of losses, with damages and costs as acquittal and discharge, 94-8-421
- Lotteries, 94-8-301 to 94-8-311—See **LOTTERIES**
- Marked cards, use prohibited, punishment, 94-8-406
- Money or property obtained by gambling or tricks as larceny, 94-8-405
- Moneys seized by officer and confiscated by court, disposition, 94-8-412
- Ordinances of cities and towns in conflict deemed void, 94-8-424
- Parimutuel betting permitted at licensed horse races, 62-511
 - percentage of pool retained by licensee, 62-512
 - tax on bets, withholding by licensee, 62-513
- Possession of gambling equipment prohibited, punishment, 94-8-404
 - maintenance as public nuisance, 94-8-409
- Prohibition against gambling unless authorized by legislature or by people, 1972 Const., III, 9
- Public nuisance, possession of apparatus as, 94-8-409
- Second offense violations, punishment, 94-8-408
- Seizure of apparatus and equipment, duty of officers, 94-8-410
 - destruction of material seized, duty of magistrate, 94-8-411

INDEX

References are to Title and Section numbers

GAMBLING (Continued)

Slot machines unlawful, definition, punishment, 94-8-428 to 94-8-431—See SLOT MACHINES

Soliciting persons to visit gambling place prohibited, punishment, 94-8-407

Sports pools

cash basis required for participation, credit or credit devices prohibited, 62-729

action on gambling debt not maintainable, 62-729 (2)

cheating unlawful, 62-731

county attorney to prosecute for violations, 62-732

definition, 62-727

enforcement by peace officers, duties, 62-732

maximum consideration for chance, 62-727

minimum and maximum payout, 62-727

minors not to participate, 62-730

sale of chance to be on premises where pool conducted, 62-727

severability of provisions, 62-736

transportation of pool cards exempt from federal law, 62-728

venue of actions for violations, 62-735

violation as misdemeanor, penalty, 62-733

Violation as misdemeanor, 94-8-426

Witnesses, privileges and immunities, 94-8-423

GAME WARDENS

See FISH AND GAME, Wardens for enforcement of laws

GARBAGE

Disposal areas regulated, 69-4001 to 69-4010—See REFUSE DISPOSAL AREAS

Disposal districts, 69-6001 to 69-6011—See REFUSE DISPOSAL DISTRICTS

Feeding to swine or other animals regulated by department of livestock, 46-2602 to 46-2610

airplanes, garbage originating on or removed from may not be treated or fed, 46-2610

airports and aircraft facilities, inspection and investigation of disposal methods by department, 46-2610

cooking or other treatment regulation, 46-2609

entry of premises for inspection authorized, 46-2605

feeding household garbage exempt from provisions, 46-2602

inspection of records and premises by department authorized, 46-2605

license required, expiration, fee, application, 46-2602, 46-2603

records may be required of feeder, 46-2605

restraining operation by department, notice, procedure, review, 46-2606

revocation of license, grounds, procedure, appeal, 46-2607

rules or orders of department, power to adopt, application, 46-2604

witnesses, power of department to subpoena and administer oaths, 46-2608

Garbage and ash collection districts, continuation authorized, 16-1031.1

creation, abolishment or change of districts authorized, 16-1031.2

service contracts, fee, special assessment authorized, 16-1031.2

Hunting or fishing license forfeited for littering, 26-812

GARNISHMENT

Availability of remedy before and during action, M. R. Civ. P., Rule 64

Compensation under occupational disease act exempt from, 92-1329

Teachers' retirement system benefits exempt from garnishment, 75-6215

GAS

Criminal mischief causing interruption or impairment of supply, punishment, 94-6-102

GAS COMPANIES

Financing statements of utility, contents and place of filing, 87A-9-302.2

definition of terms, 87A-9-302.1

Uniform Commercial Code, application, 87A-9-302.3

GEOPHYSICAL EXPLORATION

Restoration of surface to original condition required, 69-3304

INDEX

References are to Title and Section numbers

GEOTHERMAL RESOURCES

- Lease of state lands for prospecting and production authorized, 81-2601
 - bond may be required of lessee, 81-2606
 - conflicting leases, reconciliation, 81-2612
 - definition of terms, 81-2602
 - drilling and operating agreements by lessee authorized, 81-2604 (4)
 - existing or future lease of state or school lands, right to geothermal resources not included, 81-2602
 - fee may be required from applicant for lease, 81-2603
 - disposition, 81-2610
 - general provisions of lease, 81-2604 (7)
 - "geothermal resources" defined, 81-2602
 - improvements placed upon land by former lessee, reasonable value to be paid by subsequent lessee, 81-2608
 - factors considered in determining value, 81-2608
 - payment to former lessee as condition to issuance of new lease, 81-2608
 - removal or disposition of improvement by former lessee, time allowed, 81-2608
 - value fixed by arbitration, binding effect, appeal, 81-2609
 - lessee's rights under lease, 81-2604
 - moneys collected, disposition, 81-2610
 - pooling of acreage for unit operations not prohibited by lease, 81-2604 (5)
 - production from any part of unit including state lands considered produced from state lands, 81-2604 (6)
 - rents and royalties, minimum amounts, 81-2605
 - disposition, 81-2610
 - rules to be adopted by board of land commissioners, 81-2603
 - severability of provisions, 81-2613
 - surface lessee to be compensated for damage caused by geothermal lessee, bond may be required, 81-2607
 - surface rights to land reserved to state, 81-2604 (2)
 - term of lease, extension, 81-2604 (3)
 - water right for lessee, procedure to obtain, 81-2611
- Oil and gas well drilling, bottom-hole temperatures to be provided for geothermal potential determination, 60-144, 60-148

GIFTS

- Class gift, devise to deceased member of class does not lapse, 91A-2-605
- Inter vivos gift not an advancement unless so declared in writing by decedent, 91A-2-110
- Unsolicited goods deemed a gift, 67-1706.1

GONORRHEA

See VENEREAL DISEASE, 69-4601 to 69-4617

GOVERNOR

- Absence from state, lieutenant governor as acting governor, 1972 Const., VI, 14
- Adjutant general, appointment, 77-117**
- Board of land commissioners, member of, 1972 Const., X, 4
- Board of public education and board of regents
 - appointment of members, 1972 Const., X, 9; 75-5610
 - ex officio nonvoting member, 1972 Const., X, 9; 75-5610
 - state board of education, president of board, 75-5615 (2)
- Budget, submission to legislature, 1972 Const., VI, 9
- Candidacy for public office during term authorized, 1972 Const., VI, 5
- Chief budget officer, governor constitutes, 79-1012
- Citizenship, power to restore, 1972 Const., VI, 12
- Commander-in-chief of militia, 1972 Const., VI, 13
- Continuity of government in emergency, 1972 Const., III, 2
 - post-attack resource management, powers and duties, 77-2401 to 77-2406
 - succession to governorship, 82-1309, 82-3802
- Death of governor, succession of lieutenant governor, 1972 Const., VI, 14
- Delegation of constitutional powers to lieutenant governor prohibited, 1972 Const., VI, 4

INDEX

References are to Title and Section numbers

GOVERNOR (Continued)

- Departments of state government, supervision, appointment of department heads, 1972 Const., VI, 8
- Director of budget, appointment, 79-1012
- Disqualification, succession of lieutenant governor, 1972 Const., VI, 8
- Election, joint filing with candidate for lieutenant governor, 1972 Const., VI, 2
- Emergency and disaster expenditures authorized by governor, 79-2501
 - implementation and administration of program, 79-2503
 - maximum expenditure in biennium, 79-2502
- Executive branch, office in, 1972 Const., VI, 1
- Executive power vested in office, 1972 Const., VI, 4
- Fines and forfeitures, power to suspend or remit, 1972 Const., VI, 12
- Governor-elect, orderly transition of power to, 82-1311 to 82-1314
- Gubernatorial campaign fund established from optional deductions from income tax liability, 23-4901 to 23-4906—See ELECTIONS, Gubernatorial campaign fund
- Impeachment, subject to, 1972 Const., V, 13
- Inability to serve, procedure, lieutenant governor as acting governor, 1972 Const., VI, 14
- Interstate compact on juveniles, appointment of administrator, 10-1002
- Messages to legislature, 1972 Const., VI, 9
- Method of selecting in event of enemy attack and person in line for succession unable to act, 82-1309
- Military affairs
 - call of militia forces, authority of governor, 1972 Const., VI, 13
 - commander-in-chief of militia forces, 1972 Const., VI, 13
 - importation of armed forces for preservation of peace or suppression of domestic violence, 1972 Const., II, 33
- Oath of office, 1972 Const., III, 3
- Other government employment prohibited during term, 1972 Const., VI, 5
- Qualifications, 1972 Const., VI, 3
- Reports to governor, 1972 Const., VI, 15; 82-4002—See REPORTS
- Reprieves, commutations and pardons, power to grant, 1972 Const., VI, 12
- Review of executive branch, report to legislature, 82-1315
- Salary, 1972 Const., VI, 5; 25-501
- Senate confirmation of appointments, 1972 Const., VI, 8
- Special sessions of legislature, authority to convene, 1972 Const., V, 6, VI, 11
- State board of forestry, members, appointment, 28-101
- Succession to office on death, disqualification or absence of governor, 1972 Const., VI, 6, 14
- Term of office, 1972 Const., VI, 1
- Vacancies in executive or administrative offices, governor's appointing power, 1972 Const., VI, 6, 8
- Vacancy in office of governor, succession, 1972 Const., VI, 6, 14
 - acting governor upon incapacity of governor and lieutenant governor, 82-1304.4
 - rights, duties and emoluments, 82-1304.5
 - lieutenant governor's office vacant, 82-1304.1 to 82-1304.3
- Veto power, 1972 Const., VI, 10

GRADES AND BRANDS FOR FARM PRODUCTS

See AGRICULTURE, Standard grades and brands

GRAND JURY

- Challenge of panel or juror, 95-1403
- Charge by court, 95-1404
- Composition and drawing of jury, 1972 Const., II, 20; 95-1401
- Discharge upon completion of business, 95-1404
- Disclosure of proceedings, restrictions and requirements, 95-1409
- Dismissal of indictment, motion on grounds jury not selected, drawn or summoned according to law, 95-1402
- Evidence before grand jury, requirements, 95-1408
- Foreman, appointment, powers and duties, 95-1403

INDEX

References are to Title and Section numbers

GRAND JURY (Continued)

Impanelling of jury, number of names to be drawn, 93-1801

selection of jury from persons summoned, 93-1802

Indictment

amending charge, 95-1505

endorsement as "a true bill," 95-1410

evidence required to find, 95-1408

finding and presentment, 95-1410

form of charge, 95-1503

joinder of offenses and of defendants, 95-1504

number required to find indictment, 1972 Const., II, 20; 95-1401, 95-1410

prior conviction, charge of, notice and procedure, 95-1506

Number of regular jurors, alternate jurors, 1972 Const., II, 20; 95-1401

Objections to panel or juror, 95-1402

Powers and duties of jury, 95-1405

Proceedings before jury, who may give advice, who may be present, transcript of testimony, 95-1406

Secrecy of proceedings, 95-1409

Subpoena of witnesses, issuance, 95-1407

Summoning grand jury, discretion of district judge, 1972 Const., II, 20; 95-1401

GRASS CONSERVATION

Advisory capacity of department to department of state lands and county commissioners, 46-2317

Amendment of articles of incorporation of state district, procedure, 46-2318

Appeal to board from decision of state district, 46-2308 (2)

judicial review of board decision, 46-2308 (2)

"Board" defined, 46-2302

Definition of terms, 46-2302

"Department" defined, 46-2302

Dissolution of state district requested of board, 46-2325

Fees imposed against state districts, limitations, 46-2331

Incorporation of state district, certificate of approval issued by board, 46-2309

Natural Streamland and Land Preservation Act, responsibilities of district supervisors, 26-1512, 26-1514—See CONSERVATION

Powers of department and board, 46-2307

GRAZING DISTRICTS

Appeal procedure, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A

GRENADES

Possession in public place with felonious intent as felony, penalty, 69-1932

definition, 69-1931

GROUND WATER

See WATERS AND WATER RIGHTS, Ground water regulation, 89-2911 to 89-2936

GUARDIANSHIPS

Action brought without joining ward as party, M. R. Civ. P., Rule 17(a)

Appointment of guardian ad litem, M. R. Civ. P., Rule 17(c)

Force used by guardian to restrain or correct ward, when justified, 94-3-107

Gambling losses, actions for recovery of, 94-8-418 to 94-8-421—See GAMBLING

Guardian for receiving public welfare aid to dependent children payments, 71-509

Incapacitated persons, 91A-5-301 to 91A-5-313—See INCAPACITATED PERSONS, Guardians of incapacitated persons

Interference with custody of ward as criminal offense, punishment, 94-5-305

Minors, 91A-5-201 to 91A-5-212—See CHILDREN AND MINORS, Guardians of minors

Service of process on guardians, M. R. Civ. P., Rule 4D(2)

Validation of sales of property, 91-4324 et seq.

GUNS

See CONCEALED WEAPONS; FIREARMS

INDEX

References are to Title and Section numbers

H

HABEAS CORPUS

- Appeal to supreme court from order discharging petitioner, 95-2714
- Application by petition, contents, verification, 95-2703
- Bail, habeas corpus to obtain admission to, 95-2702
- Constitutional guarantee of writ, 1972 Const., II, 19
- Contempt of court for refusal to obey, 95-2706
- Contents of writ, 95-2707
- Discharge of person detained, 95-2713
- Eligibility for writ, 95-2701
- Grounds for issuance, no release for technical defects, 95-2716
- Hearing
 - evidence, depositions authorized, 95-2712
 - summary hearing authorized, 95-2711
- Issuance of writ, by whom issued, 95-2704
 - granting without delay required, 95-2705
 - writ and process issued and served at any time, 95-2715
- Obedience to writ, refusal, contempt of court, 95-2706
- Petition for writ, contents, verification, 95-2703
- Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing
- Production of person detained required, exception, 95-2710
- Return of person on whom writ served
 - contents, 95-2709
 - courts, justices or judges before whom returnable, 95-2704
 - hearing on return, 95-2711
- Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
- Service of writ, 95-2708
 - writ and process issued and served at any time, 95-2715
- Supreme court jurisdiction, 1972 Const., VII, 2
- Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

HABITUAL TRAFFIC OFFENDERS

- Adjudication as habitual traffic offender, penalties, 31-185
- "Bureau" defined, 31-177
- Certification of offender's driving record and abstracts of conviction to attorney
 - general and county attorney, 31-178
- Definition of terms, 31-177
- Existing laws unaffected, 31-189
- "Habitual traffic offender" defined, 31-177
- Highway patrol chief as administrator of law, 31-177 (3)
- Legislative declaration of intent, 31-176
- Operation of motor vehicle by habitual traffic offender unlawful while court order in effect, 31-186
 - defendant driving in violation of adjudication, certification of case to district court, 31-188
 - unlawful operation as misdemeanor, penalty, 31-187
- Point accumulation for traffic offenses, 31-177
 - points required for adjudication as habitual traffic offender, 31-177 (1)
- Purpose of law, 31-175
- Regulatory powers of agencies unaffected, 31-189
- Severability of provisions, 31-190
- Verified complaint filed in district court by county attorney, 31-179
 - certified abstracts of convictions and bond forfeitures admissible in evidence, 31-181
 - civil proceeding against offender, 31-179
 - dismissal of proceedings, filing of order with bureau, 31-184
 - hearing by court on order to show cause, 31-184
 - notice to attorney general, duties, 31-180
 - order finding defendant habitual traffic offender, surrender of license and filing of order with bureau, 31-184
 - service of process, 31-183
 - show cause order issued by court, 31-182

INDEX

References are to Title and Section numbers

HAIL INSURANCE, STATE

- Account in agency fund created, 82-1511
- Agents of department of revenue, duties, 82-1512
- Borrowing power of state board, 82-1517
- Claims for losses, appraisal, arbitration and appeal, 82-1516
- Compensation of board members and employees, 82-1519
- Counties, payments to, 82-1511
- Form describing benefits, distribution to farmer taxpayers, 82-1501
- General fund, transfer of funds to, 82-1511
- Payment of losses, 82-1517
- Reinsurance authorized, 82-1505
- Report to governor, 82-1519
- Reserve, deposit and use, 82-1507
 - maximum amount of reserve fund, 82-1507 (3)
 - valuation of reserve by qualified actuary, 82-1507 (4)
- State board of hail insurance, existence and composition, appointment and terms of members, 82-1501
 - duties of board, 82-1501 (2)
 - transferred to department of agriculture for administrative purposes, 82A-304.1
- Tax levy
 - delinquent taxes, deduction from payment for losses, 82-1517
 - expenses to be covered by levy, 82-1507
 - refund of taxes in excess of needs, 82-1507
- Warrants for money borrowed, 82-1517

HANDICAPPED PERSONS

- See LABOR, Vocational rehabilitation, handicapped persons
- Disabled adults, protective services for, 71-1914 to 71-1919—See SOCIAL SERVICES,
- Aged persons or disabled adults
- Discriminatory practices because of physical or mental handicap unlawful, 64-304 to 64-312—See CIVIL RIGHTS, Discriminatory practices
- Physical handicap, freedom from discrimination as civil right, 64-301

HEALTH, LOCAL BOARDS OF

- Appropriations to support boards, 69-4508
- City board, composition, 69-4505
- City-county board, agreement and composition, 69-4506
- County attorney as legal adviser and representative, 69-4508.1
- County board, composition, 69-4504
- Definition of terms, 69-4501
- District board, agreement and composition, 69-4507
- Federal funds, allocation to local boards, 69-4503
- Financing of local boards, 69-4508
- Powers and duties of boards generally, 69-4509
- Supervision by department of health and environmental sciences, 69-4502
- Tax levy for support of board, 69-4508
- Violation of rules or order, penalty, 69-4519
- Visiting nurse services provided by board, 69-4512

HEALTH OFFICERS

- Appointment by local board, 69-4509
 - department to appoint after failure by local governing board, 69-4511
- Communicable diseases to be reported to health officer, 69-4514
 - diseased prisoners, removal from jail, 69-4516
- Law enforcement officers to assist in enforcement, 69-4513
- Obstructing performance of duties unlawful, 69-4517
 - penalty, 69-4519
- Powers and duties in general, 69-4510
- Violation of orders, penalty, 69-4519

INDEX

References are to Title and Section numbers

HEALTH SERVICE CORPORATIONS

- Disability insurance plans to cover newborn infants from moment of birth, 15-2304.1
- Organization under Nonprofit Corporation Act, 15-2304
- Regulation of health service corporations, 40-5901 to 40-5923
 - administrative procedure act applicable, 40-5916
 - annual report of corporation, contents, 40-5911
 - application of act, construction, 40-5902
 - authorized contracts of corporation, 40-5907
 - definition of terms, 40-5901
 - enrollment representative, license required, 40-5909
 - definition, persons not included, 40-5908
 - examination of applicants, when required, 40-5909 (2)
 - issuance of license by commissioner, criteria, 40-5909 (1)
 - notice by corporation accompanied by application of representative, 40-5909 (1)
 - revocation, suspension, or refusal to issue license, grounds, 40-5910
 - temporary license issued upon notice from corporation, 40-5909 (3)
 - examination of corporation by commissioner, when conducted, report, hearing, 40-5912
 - existing corporations, grace period, 40-5923
 - fees paid to commissioner, disposition, 40-5917
 - forms used by corporations to comply with requirements of act, discontinuance by commissioner, procedure, 40-5906
 - for profit organizations, operation as health service corporations prohibited, 40-5904
 - funds and reserves required of health service corporations, 40-5905
 - grievances of members, procedure, 40-5913
 - "health service corporation" defined, 40-5901 (1)
 - "health services" defined, 40-5901 (2)
 - immunity from liability for acts of service personnel or organizations, 40-5914
 - premium taxes, exemption, 40-5915
 - prohibited trade practices, 40-5918
 - practices excluded, 40-5919
 - purposes for which health service corporation organized, 40-5903
 - rates and classifications, commissioner without power to fix, 40-5919 (2)
 - violations, 40-5920 to 40-5922
 - cease and desist order issued by commissioner, hearing, 40-5921
 - injunctive and other judicial relief, 40-5922
 - notice of violation, conference arranged for correction, 40-5920

State employee group insurance plans, 40-3905.1

HEARING AID DISPENSERS

- Board of hearing aid dispensers, existence and composition, appointment, qualifications and terms of members, 82A-1602.12
 - administrative services provided by department, 82A-1603
 - allocation to department for administrative purposes, 82A-1602
 - compensation and expenses of members, 66-3020
 - continuation in office of board members, 82A-1606
 - employment of personnel for board, 82A-1604
 - legal assistance in hearings by board, 82A-1604
 - meetings of board, 66-3006
 - powers and duties of board, 66-3005, 82A-1605
 - retention of functions by board, 82A-1605

Exclusions, 66-3009

Fees collected by department deposited in earmarked revenue fund, use by board, 66-3020

Licenses, 66-3007, 66-3014

- disciplinary proceedings, 66-3017, 66-3022
- examinations, 66-3011, 66-3012
- fee and requirements, 66-3010, 66-3014
- practicing without license a misdemeanor, 66-3021
- reciprocity with other states, issuance without examination, fee, 66-3019
- renewal, annual fee, effect of delinquency, 66-3016
- temporary license, qualifications for, fee, 66-3014

Permanent place of business in state required, exception, records, notice, 66-3015

INDEX

References are to Title and Section numbers

HEATING, VENTILATION, AND AIR CONDITIONING

- Apprentices, permit and registration required, qualifications, 66-3508 (3)
- Board created, composition, terms, and qualifications of members, 82A-1602.29
 - meetings of board, frequency, 82A-1602.29 (6)
 - per diem and mileage expense of members, 82A-1602.29
 - powers and duties of board, 66-3504
 - quorum of board, 82A-1602.29 (5)
 - rules, promulgation authorized, 66-3504
- Criminal offenders, licensure of, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS
- Definition of terms, 66-3503
- Earmarked revenue account, license and equipment fees deposited in, 66-3505
- Exemptions, 66-3515
- License required for performance of warm air heating, ventilation, and air conditioning work, 66-3513
 - bond required for master license; amount, persons who may sue, 66-3510
 - waiver if adequate liability insurance provided, 66-3510
 - display of license at place of business required, 66-3511
 - examination of applicants for master or journeyman license, 66-3506
 - examination fee, 66-3509
 - persons exempt from examination, 66-3507
 - fees for application and license, 66-3509
 - identification to be presented by licensee working away from place of business, 66-3511
 - qualifications for license, 66-3508
 - journeyman mechanic license, 66-3508 (2)
 - master license, 66-3508 (1)
 - revocation or suspension of license, grounds, hearing, procedure, 66-3512
 - "warm air heating, ventilation, and air conditioning work" defined, 66-3503
- Purpose of law, 66-3502
- Short title, 66-3501
- Unlawful conduct, penalty, 66-3513, 66-3514
 - applicant for license not in violation, 66-3514
- "Warm air heating, ventilation, and air conditioning work" defined, 66-3503 (3)

HERD DISTRICTS

- Created jointly between two or more counties, 46-1501

HIDES

- Dead or fallen animals, 46-2412

HIGHWAY PATROL

- Appeals from supervisor, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
- Board abolished and functions transferred, 82A-1205
- Chief of patrol, appointment, 31-104
- Fees, fines and forfeitures, disposition, 31-114
- Habitual traffic offenders, proceedings for adjudication, 31-175 to 31-190—See HABITUAL TRAFFIC OFFENDERS
- Identification cards, issuance to persons not holding drivers' licenses authorized, 31-170
 - agents for issuance of cards, 31-173
 - fees, amount and disposition, 31-174
 - immunity of public entity from liability for inaccurate information, 31-172
 - rules and regulations for issuance of cards, 31-171
- Reserve patrolmen, filling vacancies, 31-105
- Retirement system
 - actuarial investigations and data, 31-206
 - administration by department of administration, 82A-201.1
 - armed forces, qualification of service in, 31-223
 - board of administration, duties, 31-206

INDEX

References are to Title and Section numbers

HIGHWAY PATROL (Continued)

Retirement system (Continued)

- cost of living adjustments to benefits, 31-231
 - definition of terms, 31-201
 - "department" defined, 31-201
 - payments into retirement account, 31-205
 - members, contributions by, 31-209
 - state contributions, 31-210
 - referendum under Social Security Act, certification by governor, 59-1102.1
 - rules and regulations, 31-206
 - surplus moneys in account, investment, 31-205
- Rules and regulations prescribed by division, 31-103
- Salaries paid from highway department earmarked fund, 31-105.1
- Submission of new-voter list to major political parties, 23-3001
- Supervisory personnel, selection, tenure, 31-105
- Transfer of functions to division of motor vehicles, 82A-1206
- Vehicle equipment safety compact, duties under, 32-21-166 to 32-21-175—See MOTOR VEHICLES, Equipment safety compact ratified

HIGHWAYS, BRIDGES AND FERRIES

Abandoned vehicles, removal and sale, 53-901 to 53-909—See MOTOR VEHICLES, Abandoned vehicles

Beautification of highways

- expenditure of funds
 - nonmatching funds, limitation to, 32-2425
 - purposes for which federal funds expended, 32-2423
 - land acquired, extent of interest and methods of acquisition, 32-2424
 - purposes of act, 32-2422
- Bicycle trails and footpaths to be established along state highways and thoroughfares, 32-2626, 32-2627
- duties of department and commission, 32-2627
 - promotion of traffic safety as purpose, 32-2627
 - restrictions on use of trails and footpaths, 32-2627
 - sources of funds, 32-2626

Board of highway appeals abolished, functions transferred, 82A-709

Checking stations along highways authorized, 32-2419

- co-operation by department with other agencies required, 32-2421
- major highways entering state, checking stations required, 32-2420

Classes of highways enumerated and defined, 32-2301

Controlled access facilities

- commercial enterprises prohibited on public land, 32-4310
- definition of terms, 32-4302
 - traffic regulatory act, 32-2119
- designation of highway by state highway commission, 32-4303
 - local authorities empowered to make designations, 32-4305
- design of facilities, powers of highway authorities, 32-4306
- driving violations on facility, penalty, 32-4311
- frontage roads maintained by department of highways, 32-4308.1
- grade crossing elimination, powers of highway authorities, 32-4307
- intersections with facilities, power of authorities to permit, 32-4307
- interstate sign manual, adoption for use on controlled access highways, 32-2133
- plan and description of designated facility by department, contents, 32-2413 (1)
- plan for proposed highway, filing with county clerk, 32-2413
- policy of state, 32-4301
- resolution designating highway, findings and statements to be included, 32-4303
 - local authorities empowered to pass resolutions, 32-4305
 - secondary highways, consent of governing body required for control, 32-4305
- right of way acquisition for highway, 32-3920
 - county acquiring property, 32-4018
 - description in deeds, sufficiency, 32-2413 (2)
- service roads, design, construction and regulation, 32-4308
- signs required to show points of ingress and egress, 32-4309
- traffic regulation, powers of local authorities, 32-4305
 - violation of traffic regulations, penalties, 32-4311

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

County bonds

- amortization bonds preferred, provisions for repayment, 32-3806
- emergency repairs after disaster, limitation on amount of bond issues, 32-3804
- inability of county to pay total indebtedness, refunding agreements, 32-3802
- maximum amount of indebtedness outstanding, 32-3801
 - additional limitation except for emergency and refunding purposes, 32-3804
- purposes for which bonds may be issued, 32-3801
 - single purpose defined, 32-3803
- redemption of bonds before maturity, provision for, 32-3805
- refunding bonds authorized, 32-3801
 - inability of county to pay total indebtedness, 32-3802
 - maximum term of refunding bonds, 32-3805
- serial bonds permitted, provisions for repayment, 32-3806
- term of bonds limited, 32-3805

County bridges

- bond issues for construction of bridges, 32-2903
- contracts for work on bridges to be let by board, procedure and requirements, 32-4204
 - minimum amount to be done by contract, 32-2802
- election to authorize bridge construction, 32-2903
- intercounty bridges, construction and maintenance, 32-2906
- maintenance as responsibility of county commissioners, 32-2901
- management and control of bridges by commissioners, 32-2905
- municipalities, responsibility for construction and maintenance within, 32-2902
 - police regulation of bridges, 32-2905
- repair of bridges, duty of commissioners, 32-2904
- state highway personnel assisting county commissioners, 32-2502
- stream beds and banks, repair to protect bridge, 32-2905
- street or suburban railway sharing bridge, sharing of costs, 32-3603
- tax levy on property in county for bridge construction and maintenance, 32-3602
 - additional levy on approval by voters in election, 32-3605
 - municipality, special levy for bridge in, 32-3604

County motor vehicle fund, license and registration fees paid into, 32-3701, 53-122

- city road fund in population centers, segregation, 32-3702
 - transfer of balance to county road fund, 32-3702
 - use of city road fund, 32-3703
 - use of county road fund, 32-3706

County roads

- accounts of labor, equipment and materials furnished, 32-3003
- appropriations for expenditures within district, 32-2812
- auto passes on county roads, construction and maintenance, 32-2811
 - state or federal highway, pass at connection with, 32-2810
- bonds, power of commissioners to issue, 32-2802
- cattle guards, appurtenances and gates adjacent to county roads, 32-2802
- certification of labor, equipment and materials furnished, 32-3003
- continuation in effect until properly abandoned or vacated, 32-4014
- contracts for work on roads to be let by board, 32-4201
 - acceptance of work required for completion of contract, 32-4203
 - advertising for bids, 32-4201
 - bond required of bidders, 32-4202
 - bond required of contractor, 32-4203
 - minimum amount to be done by contract, 32-2802
 - preference given to resident bidders, 32-4202
 - wage scale required of contractor, 32-4202
- definition, 32-2301
- districts, division of county into, 32-2801
- drains and ditches, construction and protection, 32-3007
- employment of laborers by superintendent, 32-3006
- expenditures in road districts limited by quarterly apportionments, 32-2812
- guideposts, erection, 32-2801
- improvement district proceedings, 32-3101 to 32-3131—See Local improvement districts, below

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

County roads (Continued)

- information to be furnished to highway commission, 32-2815
- inspections and reports on county road work, 32-2805
- machinery for road work, purchase by county, 32-2806
 - use of machinery within municipality, 32-2807
- material for road building, acquisition, use and disposal, 32-2806
- obstructions, duty of commissioners to remove, 32-2904
- opening, discontinuing or changing road
 - canal or ditch crossing, duty of owner to prepare, 32-4013
 - damages determined by board, 32-4006
 - payment of damages from county fund, 32-4008
 - eminent domain on failure to reach agreement as to damages, 32-4007
 - investigation by board of desirability of action, 32-4004
 - joint action required on county line roads, 32-4002
 - notice by board of decision on proposed action, 32-4004
 - notice to road supervisor of action, 32-4010
 - petition required for action, 32-4001
 - contents of petition, 32-4003
 - number of signatures required on petition, 32-4002
 - railroad crossing, duty of railroad owner to prepare, 32-4013
 - recording of findings, plat, and surveyor's report, 32-4011
 - section or subdivision lines, petition to change road to, 32-4009
 - survey and platting of road to be opened, 32-4005
- payment of claims on superintendent's certificate, 32-3004
- plat books prepared by surveyor, 32-2803
- powers of county commissioners in general, 32-2801, 32-2802
- reports by county commissioners to highway commission, 32-2801
- right of way, power of county commissioners to acquire, 32-2802
- secondary road information to be given county commissioners by highway commission, 32-2608
- seeding of right of way areas along county roads, 32-2813
- special fuel dealers and users licenses tax, disposition of funds, 84-1840
- state land equalization payments, allotment from, 81-1120
- state personnel assigned to assist commissioners, 32-2502
- stock lanes, establishment and maintenance, 32-4015
- subdivision and section lines, roads to follow when practicable, 32-2809
- superintendent of roads, appointment by board of commissioners, 32-2803
 - bond filed by superintendent, 32-3001
 - compensation of superintendent, 32-3001
 - duties of superintendent in general, 32-3002
 - oath of office, 32-3001
 - requisition and use of equipment, tools and implements, 32-3005
- supervisor, employment by board of commissioners, 32-2803
- tax levy on property in county for road construction and maintenance, 32-3601
 - additional levy on approval by voters at election, 32-3605
- traffic limitations, power of commissioners to impose, 32-2802
- transfer of county roads to state highway commission, 32-4016
- weed control along county roads, 32-2814
- width of roads prescribed, 32-2808

Debris, dumping on highway, 32-4410

Definition of terms, 32-2203

Department of highways, existence, director as head, 82A-701

- advice to and consultation with county officers, 32-2410
- co-operation in federal-aid programs, 32-2408
- co-operation with local agencies, 32-2406
- director as head of department, appointment, 82A-701
- duties of department, 32-2409
- employee grievances, hearing, 32-2504, 32-2505
 - enforcement of board order in district court, 32-2505.3
 - interference by supervisor or department as grievance, 32-2505.1 (2)
 - order to department requiring resolution of grievance, 32-2505.2
 - procedure before board, 32-2505.1

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

Department of highways (Continued)

- expenditure of funds for designated highways, 32-2408 (2)
- federal aid, acts necessary to secure authorized, 32-2401
- investigation of construction methods, 32-2410
- powers of department generally, 32-2406
- records, sale to public of records and publications, 32-3914
- reorganized department, 82A-701 to 82A-709—See REORGANIZATION OF STATE GOVERNMENT, Department of highways
- reports to governor, 32-2409
- report to budget director, 79-1013
- rules, adoption authorized, 32-3929
- rules for construction, repair, maintenance, and marking of highways and bridges, adoption authorized, 32-2407 (4)
- sign manual for use on highways, adoption, 32-2133
- statistical compilations by department, 32-2410
- traffic-control devices placed along highways, specifications, violation as misdemeanor, penalty, 32-2134
 - meaning of traffic-control signals, duties of vehicle operators, 32-2137
 - notice of law and penalties provided to be posted along highways, 32-2134.3
- unauthorized sign or device as public nuisance, removal, 32-2134(f)
- weight of vehicles on highways, studies and testing by department, 32-2411

Director of highways as head of department, appointment, 82A-701

Emergency construction area

- designation by county commissioners, 32-2816
- livestock not to run at large in area, 32-2818
 - impounding of animals at large, 32-2819
- penalty for violation, 32-2820
- notice of designation of area, 32-2817

Encroachments on highway

- abatement as nuisance by judicial action, 32-4408
- notice to remove encroachment, manner of giving, 32-4406
- penalty for failure to remove after notice, 32-4407
- prosecution of actions by county attorney, 32-4409
- removal at expense of owner after notice, 32-4408
- removal by road supervisor or county surveyor without notice, 32-4405

Encroachments on highway under jurisdiction of department, procedure for removal, 32-4411 to 32-4414

- denial of encroachment, judicial determination, 32-4414
 - judgment for department, removal at expense of person maintaining encroachment, 32-4414 (1)
- encroachment affixed to land, time limit for removal after notice, removal by department, recovery of expense, 32-4414 (2)
- notice to person maintaining encroachment, contents, manner of giving, 32-4411, 32-4412
- time limit for removal, liability for cost of removal, 32-4413

Excavations across highways, permit and bridging required, 32-4403

Federal aid highways

- assent to provisions of Federal acts, 32-2401
- canal or ditch crossing by highway, duty of owners to prepare crossing, 32-3918
- continuation of highways until properly abandoned or vacated, 32-3917
- contracts for implementation of Federal aid authorized, 32-2401
- contracts for work on highways to be let by highway commission, 32-4101
 - bond required of contractors, 32-4103
 - competitive bidding required, 32-4102
 - counties to do work, agreements for, 32-4102
 - qualifications of contractors working beyond contract time, waiver of requirements, 32-4102 (4)
 - wage scale required of contractors, 32-4101
- co-operation by department, 32-2408 (2)
- county contracts for work on federal-aid system, 32-4102
- county road, transfer to Federal-aid system, 32-4016
- designation of highways included in Federal-aid systems, 32-2407

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

Federal aid highways (Continued)

- highways not continuously in state, designation as part of Federal-aid system, 32-2408
- railroad crossing by highway, preparation of crossing, 32-3918
- rules necessary for compliance with Federal acts authorized, 32-2401
- seeding along highways, 32-2412
- utility facilities along Federal-aid and interstate highways, location, 32-2414
 - costs paid by department, 32-2415
 - definition of terms, 32-2416

Ferries, county acquisition of property for, 32-4017

- tax levy for construction, maintenance and repair, 32-1518

Ferries uniting two counties, construction, maintenance and operation, 32-2907

Flood control projects, contracts for use of highway property for, 89-3310

Forest development roads, enforcement of traffic laws on, 32-2124.4

- definition of terms, 32-2124.3
- special service roads excepted, 32-2124.5

Funds available, allocation by department

- bond account, use of license proceeds for, 32-2601
- bridge construction and reconstruction on Federal-aid system, special allocations for, 32-2604
- bridge replacement, apportionment of funds for, recovery through deductions, 32-2614
- districts to which funds apportioned, 32-2603
- economic growth center development highways, allocation of funds, priority, 32-2622
 - apportionment of funds, methods, 32-2623
 - centers determined by department, criteria, 32-2621
 - "economic growth center" defined, 32-2620
- highway patrol salaries paid from earmarked revenues, 31-105.1
- increase in funds allocated to particular district, 32-2610
- interstate highway system, allocation of funds for, 32-2609
- matching of federal funds, allocations for, 32-2605
 - interim apportionment by department, 32-2612
- primary federal-aid system, allocation of funds for, 32-2606
- priority primary routes, apportionment of funds for, 32-2617, 32-2618
 - expenditures exceeding apportionment, recovery, 32-2619
 - "priority primary routes" defined, 32-2615
 - selection of routes by department, procedure, 32-2616
- safety construction programs, allocation of funds for, 32-2613
- secondary federal-aid system, allocation of funds for, 32-2607
- urban federal-aid funds, allocation, 32-2611

Garbage, dumping on highway, 32-4410

Gasoline taxes, highway revenue nondiversion, 1972 Const., VIII, 6

- proceeds used for highway purposes, state parks where motorboating allowed as exception, 32-2601

Good Roads Day, annual observance, 32-4401

Grazing livestock on highway unlawful, exceptions, penalty for violation, 32-21-176 to 32-21-178

Habitual traffic offenders, proceedings for adjudication, 31-175 to 31-190—See HABITUAL TRAFFIC OFFENDERS

Herding or driving herd of livestock on highways, requirements, violation as misdemeanor, 32-21-180

Highway commission, composition, 82A-706.1

- allocated to department for administrative purposes, 82A-706.1 (3)
- bond required of members, 32-2404
- designated as quasi-judicial board, 82A-706.1
- fencing along highways through open range, 32-2426, 32-2427
- funds credited to account of commission, 32-3205
- meetings of commission, 32-2404
- number of member votes required for action, 82A-706.1 (2)
- records of commission maintained and preserved by department, 32-2409
- rules and regulations, 32-2409

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

- Junkyards along roads
 - agreements with the United States, 32-4522
 - definition of terms, 32-4514
 - injunction against noncomplying junkyard, 32-4521
 - license required for operation, 32-4515
 - duration of license, 32-4516
 - fee for license, 32-4516
 - issuance of license, 32-4516
 - renewal of license, 32-4516
 - screening required for license, 32-4517
 - location of junkyards, restrictions, 32-4517
 - purpose of act, 32-4513
 - removal of junkyards, 32-4520
 - restrictive ordinances and regulations not abrogated by statute, 32-4523
 - screening of junkyards, specifications, 32-4517
 - acquiring land for screening purposes, 32-4520
 - existing junkyards, 32-4518
 - regulations governing screening, 32-4519
- Legislative findings, 32-2201
- Legislative policy and intent, 32-2202
- Lewis and Clark highway designated, 32-2302
- Livestock gates on county roads, 32-2811
 - state or Federal highway, gate at intersection with, 32-2810
- Local improvement districts
 - assessment of benefits
 - apportionment of cost among parts of district, 32-3111
 - apportionment of costs and expenses to land, 32-3115
 - approval and certification of assessment roll by board, 32-3117
 - board to levy and collect assessment, 32-3101
 - confirmation of assessment roll, 32-3116
 - correction of errors in assessment roll, 32-3117
 - front-foot plan for levy of assessments, 32-3112
 - lien of assessment on land, 32-3101, 32-3111, 32-3117
 - notice of filing of assessment roll, publication, 32-3116
 - objections to assessment roll, hearing by board, 32-3116
 - parts into which district divided for assessment, 32-3110
 - roll of assessment, contents and filing, 32-3115
 - units for levy of assessment, 32-3112
 - valuation of lands according to tax assessment roll, 32-3106
 - audit of claims and accounts of district, 32-3129
 - board of county commissioners, powers and duties in general, 32-3101
 - bond issues
 - amount of bonds not to exceed costs and expenses, 32-3123
 - board of county commissioners to issue bonds, 32-3101
 - call of bonds before maturity, 32-3127
 - contractor, issuance of bonds to in payment for improvement, 32-3126
 - progress payments during construction, 32-3130
 - form of bonds, 32-3123
 - immediate payment of assessment to release lands from bonds, 32-3125
 - interest payments by treasurer, 32-3127
 - interest rate on bonds, 32-3118, 32-3123
 - maturity date of bonds, 32-3123
 - notice of assessment roll and proposed issue of bonds, 32-3124
 - redemption of land from bonds by immediate payment of assessment, 32-3125
 - remedies of bondholders on default, 32-3128
 - sale of bonds to pay costs and expenses, 32-3126
 - boundaries of district and parts of district, 32-3110
 - claims and accounts, approval, certification and payment, 32-3129
 - committee of supervisors, election and qualification, 32-3105
 - compensation of supervisors, 32-3113
 - duties of committee, 32-3106

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

Local improvement districts (Continued)

construction or improvement of road

- county performing construction or improvement work, 32-3114
- inspector, appointment, duties and compensation, 32-3113
- progress payments to contractor, 32-3130

contracts for work of improvement

- acceptance of work required for completion of contract, 32-4206
- advertising for bids, 32-4205
- bond required of bidders, 32-4205
- bond required of contractor, 32-4206
- county not liable on contract, 32-4207
- execution of contract by board of county commissioners, 32-4207
- opening of bids, 32-4205
- preference given to resident bidders, 32-4206
- price of contract not to exceed cost estimates, 32-4205
- progress payments authorized, 32-4206
- wage scale required of contractors, 32-4206

costs of construction or improvement

- county share of cost, maximum and order of payment, 32-3109
 - agreement with district to share costs, 32-3108
- damage or injury to property, release obtained by committee and surveyor, 32-3106
- estimates of cost prepared by superintendent of roads, 32-3106
 - reports of estimates to board, 32-3107
- maximum costs allowed, 32-3107

damage or injury to property, releases obtained by committee and surveyor, 32-3106

maximum damages, costs and expenses, 32-3107

meeting of road superintendent and landowners

- conduct of meeting, 32-3105
- election of committee of supervisors, 32-3105
- notice of time and place of meeting, publication, 32-3104
- resolution fixing time and place of meeting, 32-3104

municipalities, roads within not to be included, 32-3103

order creating improvement district, 32-3107

payment of cost and expenses

- alternative plans available, 32-3118
- immediate payment plan, notice of assessment roll to landowners, 32-3119
 - contents of notice, 32-3120
- installment payment plan
 - bonds authorized for installment payments, 32-3122
 - collection of installments by treasurer, 32-3121
 - immediate payment of assessment to release land from bonds, 32-3125
 - notice of assessment and proposal to issue bonds, 32-3124
 - order of board levying assessment, 32-3121
 - redemption of land from bonds by immediate payment of assessment, 32-3125
 - sale of land for collection of delinquent installments, 32-3121
- remaining funds after payment, refund, rebate or other disposition, 32-3131

petition for construction or improvement of road, contents and filing, 32-3102

plans and specifications prepared by road superintendent, 32-3106

refunds and rebates of assessments, 32-3131

remaining money after payment of costs and expenses, disposition, 32-3131

report of surveys and estimates by road superintendent, 32-3107

resolution of public interest to be passed by board on receipt of petition, 32-3103

survey and examination of road and lands by committee and surveyor, 32-3106

National defense highway program, powers and duties of department of military affairs, 32-1702

safety and driver training program authorized, 32-1703

National park approach roads, agreements with federal agencies for, 32-2601

Open range, fencing along state highways through high hazard areas, 32-2425.1 to 32-2429—See State highways, fencing, below

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

- Outdoor advertising regulation, 32-4715 to 32-4728
 - commercial or industrial areas, agreement with federal authorities for advertising in, 32-4724
 - areas temporarily zoned excluded, 32-4716(i)
 - definition of terms, 32-4716
 - highways affected by law, 32-4715
 - legislative findings and policy, 32-4715
 - nonconforming signs, displays and devices prohibited, 32-4717, 32-4722
 - appeal from decision of commission to district court, taxing of costs, 32-4722
 - findings, conclusions and decision of commission, copies to be mailed to parties, 32-4722
 - hearing on notice of intention to remove, when required of commission, 32-4722
 - immunity of department from liability, exceptions, 32-4722
 - notice of intention to remove required of department, 32-4722
 - public nuisances, nonconforming advertising declared to be, 32-4728
 - removal of structure by department, liability of owners for costs, 32-4722
 - transcript of record at hearing to be kept by commission, 32-4722
 - ordinances, regulations or resolutions more restrictive not abrogated by law, 32-4725
 - regulations of commission in conformity with federal law authorized, 32-4718
 - amendment to conform to change in federal law, when authorized, 32-4726
 - signs, displays and devices in proximity to highway, permit and conformity with standards required, 32-4717 to 32-4720
 - application for permit, contents, duration, identification tag, fee, 32-4720
 - sign erected proper distance from highway but for purpose of message being read from main travelled way, criteria for outdoor advertising to be met, 32-4717 (c)
 - permit and tag issued for existing signs, 32-4720 (5)
 - subsequently erected signs unlawful, 32-4722 (a)
 - standards for permitted advertising, 32-4719
 - violations, notice, remedial action by department, 32-4721
 - structures lawfully existing prior to effective date of law, 32-4720, 32-4723
 - acquisition by department, 32-4723
 - permit and identification tag to be issued by department, fee, 32-4720
 - removal for improper maintenance authorized, 32-4720, 32-4721
 - removal without just compensation prohibited, exceptions, 32-4723
 - title of law, 32-4715
 - violations as misdemeanor, 32-4727
- Overflow of highway, liability for damages and repairs, 32-4404
- Peace officers, appointment by director, 32-1632
 - arrest by officer, procedure, 32-1641
 - completion of training required before arrest authorized, 32-1634
 - co-operation with other agencies, 32-1640
 - identification badge to be displayed, 32-1637
 - inspection powers of officers, 32-1636
 - justice of peace fees, 32-1641
 - offenses for which arrest authorized, 32-1639
 - "public highways" defined, 32-1631.1
 - rules and regulations, 32-1633
 - training to be provided, 32-1633
 - uniform to be worn, 32-1635
- Policy of state, 32-2202
- Ports of entry, establishment on highways authorized, 32-2419
 - co-operation with other agencies, 32-2421
 - major highways entering state, checking stations required, 32-2420
- Preference of Montana labor in awarding contracts, 41-701
 - penalties for violations, 41-703
- Refuse, dumping on highway, 32-4410
- Right of way acquisition for county roads
 - controlled access facility, acquisition for, 32-4018
 - conveyance of right of way, execution and recording, 32-4012

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

- Right of way acquisition for county roads (Continued)
 - damages determined by board, 32-4006
 - payment of damages out of county fund, 32-4008
 - eminent domain proceedings after failure to agree on damages, 32-4007
 - recording of copy of judgment, 32-4012
 - estates which may be acquired by public, 32-3901
 - ferry, acquisition of property for, 32-4017
 - interest acquired by public, 32-4001
 - investigation by board of desirability of acquisition, 32-4004
 - joint action required on county line roads, 32-4002
 - notice by board of decision on proposed acquisition, 32-4004
 - opening and survey of road, 32-4005
 - petition of landowners required for acquisition, 32-4001
 - contents of petition, 32-4003
 - number of signatures required on petition, 32-4002
 - power of board of commissioners, 32-2802
- Right of way acquisition for state highways
 - controlled access facilities, 32-3920
 - plan and description prepared by department, contents, 32-2413 (1)
 - improvements after filing not compensable, 32-3908
 - descriptions in deeds given to or received from state, sufficiency, 32-2413 (2)
 - eminent domain power, procedure for exercise, 32-3904
 - entire parcel acquired where portion not needed will have little market value, 32-3905
 - estates which may be acquired by public, 32-3901
 - future highway purposes, power to acquire for, 32-3906
 - irrigable lands rendered unusable, compensation paid, 32-3916
 - lease of unused property, disposition of rentals, 32-3906
 - materials needed for road building, right of department to remove and use, 32-3907
 - plan and description prepared by department, contents, 32-2413 (1)
 - improvements after filing not compensable, 32-3908
 - plat to be filed where part of parcel acquired, 32-3905
 - power of department of highways generally, 32-3902
 - purposes for which property may be acquired, 32-3903
 - relocation assistance, 32-3923 to 32-3931
 - advisory assistance, 32-3924
 - business losses from relocation, 32-3925
 - closing costs on new purchase, 32-3926
 - definitions, 32-3923
 - increased cost for replacement dwelling, 32-3926
 - moving expense as part of cost of construction, options of displaced persons, 32-3925
 - occupants of dwelling, payments to, 32-3927
 - payments not income for state tax purposes, 32-3930
 - payments to landowners, 32-3925 to 32-3927
 - review of application for assistance, 32-3928
 - rules and regulations of department, 32-3929
 - resolution required for exercise of eminent domain power, 32-3904
 - surplus property disposition
 - demand by former owner that land be offered for sale, 32-3909
 - determination by department that property is not needed, 32-3909
 - exchange for property needed, 32-3909
 - personal property, sale by department, 32-3914, 82-1914
 - sale of property, power of department, 32-3910
 - appraisal of property required before sale, 32-3911
 - conveyance of property to purchaser, 32-3915
 - minimum price of sale, 32-3911
 - notice of sale, publication, 32-3911
 - place of sale, 32-3911
 - preferential right of previous owner to repurchase, 32-3912

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

Right of way acquisition for state highways (Continued)

surplus property disposition (Continued)

sale of property (Continued)

private sale after unsuccessful public offering, 32-3913

public sale, when required, 32-3910

title not to pass until purchase price paid, 32-3911, 32-3913

time limitation for commencement of condemnation or acquisition of property, 32-3908

Roadblocks, arrest at, 95-618

Secondary road information to be provided to county commissioners, 32-2608

Seeding along state and federal highways, 32-2412

Signs along highways, injury to or removal prohibited, penalty, 32-2134.1

posting of notices of act along highways, 32-2134.3

reward for informing on violators, 32-2134.2

Special fuel dealers and users license tax, disposition of funds, 84-1840

State highways

bypassing of municipality, when consent of governing body required, 32-1628

canal or ditch crossing by highway, duty of owners to prepare crossing, 32-3918

continuation of state highway until properly abandoned or vacated, 32-3917

contracts for work on highways to be let by highway commission, 32-4101

bond required of contractors, 32-4103

competitive bidding, when required, 32-4102

counties doing work, agreements for, 32-4102

preference to resident bidders, 32-4102

wage scale to be paid by contractors, 32-4101

county road, transfer to state highway system, 32-4016

designation of highways by highway commission, 32-2407

fencing along highways through extrahazardous areas of open range, 32-2425.1 to 32-2429

access facilities for livestock, water and cattle guards to be installed where necessary, 32-2429

cost of fencing as expenditure under federal-aid highway safety programs, 32-2429

delineation and classification of open range areas as high hazard areas or low hazard areas, 32-2427

fencing required of department, 32-2426, 32-2429

"high hazard area" defined, 32-2426 (2) (b)

"low hazard area" defined, 32-2426 (2) (c)

"open range" defined, 32-2426 (2) (a)

procedure for classifying hazardous areas, publication of summary, hearing, final decision, 32-2428

purpose of law, 32-2425.1

fencing along highways through open range, 32-2426, 32-2427

municipalities, payment of construction and maintenance costs within, 32-1627

railroad crossing by highway, duty of railroad to prepare crossing, 32-3918

seeding along state highways, 32-2412

weed control by county board, 32-2814

Traffic-control devices placed along highways by department, 32-2134

erection of sign or traffic-control device in violation as misdemeanor, penalty, 32-2134

"flag person" defined, 32-2119 (d)

"flag vehicle" defined, 32-2119 (e)

meaning of traffic-control signals, duties of vehicle operator, 32-2137

notice of law and penalties provided to be posted along highways, 32-2134.3

sign manual for uniform system, adoption, 32-2133

unauthorized sign or device as public nuisance, removal, 32-2134

Traffic safety program

definition of terms, 32-4602

department of community affairs, duties, 32-4605

federal program, participation of state, 32-4605

funds, acceptance and use, 32-4606

INDEX

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)

- Traffic safety program (Continued)
 - governor to administer act, 32-4605
 - local programs, approval required, 32-4607
 - purpose of act, 32-4601
 - superintendent of public instruction responsible for driver education, 32-4605
- Trees along highways, injury to, 94-3202
- Use of highways, standard of care required, 32-2144 (a)
- Utility facilities, location along Federal-aid and interstate highways, 32-2414
 - cost, payment, 32-2415
 - definition of terms, 32-2416
- Violations of highway code, prosecution, 32-2418
- Wage scales of contractors, 41-701
 - penalties for violations, 41-703
- Water overflowing highway, liability for damages and repairs, 32-4404
- Weed control along highways, 32-2814
- Weigh stations along highways, 32-1126
- Weight, dimensions and characteristics of vehicles, standards established for, 32-1123.1 to 32-1123.11
 - alteration of standards by local authorities prohibited, 32-1123.12
 - climatic conditions altering use of highway, order of department, 32-1128
 - violation a misdemeanor, penalty, 32-1130
 - co-operative studies by department and other agencies, 32-2411
 - disposition and deposit of fees, 32-1127.10
 - excess size and weight of vehicle, issuance of special permit by department or local authorities authorized, 32-1127.1
 - confiscation, revocation, cancellation or suspension of permit, 32-1127.9
 - discretionary with department or local authority, harvesting machinery excepted, 32-1127.2
 - display of permit in vehicle, 32-1127.8
 - fees for permit, 32-1127.3, 32-1127.5
 - misrepresentation as misdemeanor, 32-1127.7
 - permits issued to governmental entities without fee, 32-1127.6
 - self-propelled vehicle for movement of haystacks, conditions for issuance of permit, 32-1127.4
 - single trip permits, fee, 32-1127.5
 - gross weight permitted, 32-1123.6
 - measuring distance between axles, 32-1123.8
 - reduction of axle loads by department, when authorized, 32-1123.9
 - height of vehicle, 32-1123.4
 - implements of husbandry in excess of prescribed width, regulation for moving on highways, 32-1123.3
 - interstate and defense highway system, application of federal law, 32-1123.11
 - length of vehicle, 32-1123.5
 - bus, overall length, 32-1123.5 (2)
 - passenger vehicle towing another vehicle, restrictions, 32-1123.5 (5)
 - self-propelled vehicle, 32-1123.5 (1)
 - truck or tractor and trailer combinations, overall length, 32-1123.5 (3)
 - vehicle towing one or more vehicles, 32-1123.5 (4)
 - special permits for loads in excess of standard on state highways authorized, 32-1123.7
 - application to interstate and defense highways, 32-1123.7
 - fees for permit, 32-1123.7, 32-1127.3
 - maximum loads under special permit, formula for calculating, 32-1123.7
 - operation without special permit unlawful, 32-1123.10
 - violation as misdemeanor, 32-1124
 - complaint, contents, filing, process, 32-1125 (2)
 - disposition of fines and forfeitures, 32-1125 (3)
 - movement of vehicle to nearest scale, 32-1124 (2)
 - penalties for violation, 32-1125
 - width of vehicles, 32-1123.3
- Width required for roads, 32-2808

INDEX

References are to Title and Section numbers

HISTORICAL SOCIETY OF MONTANA

Agency of state government, 44-516

Allocation to state board of education, certain powers retained in board of trustees, 82A-501.1

Antique automobile collection, use of proceeds, 44-529

Board of trustees

appointment and terms of members, 44-519

compensation and expenses of members, 82A-507 (3)

composition, appointment, qualifications, terms and compensation of members, 82A-507

continuation of board, 82A-507

duties of board, 44-523

executive committee, selection and duties, 44-521

mileage reimbursement of trustees, 44-522

powers of board, 44-523

qualifications of trustees, 44-520

Commercial enterprises authorized, 44-525

Continuation and perpetuation as "Montana Historical Society," 44-516

Definition of terms, 44-517

Director, powers and duties, 44-524

Fine arts' commission property, transfer to society, 44-528

Fund raising drives authorized, 44-525

Library independent of other libraries, 44-518

Microfilm division, creation and function, 82-3205

Moneys received by society, deposit and use, 44-527

Museum independent of other institutions, 44-518

Purposes of society, 44-516

Quarters in Veterans and Pioneers Memorial Building, 44-526, 78-202

Seal of society, description, 44-525

HISTORIC AND PREHISTORIC STRUCTURES

Constitutional provision for preservation and administration, 1972 Const., IX, 4

State Antiquities Act, 81-2501 to 81-2514

advisory council, appointment authorized, 81-2513

co-operation with federal, state and local governmental agencies, 81-2509

co-operative agreements with private owners, contents, 81-2508

definition of terms, 81-2503

discovery of sites or objects on state lands, report required, 81-2512

distribution of collections to be made on loan only, 81-2506

inconsistent laws superseded, 81-2514

injunction to prevent waste, destruction and removal, protective program pending period of injunction, 81-2510

permit required to excavate, remove or restore registered site or object, 81-2505

violation as misdemeanor, penalty, 81-2511

purpose, 81-2502

short title, 81-2501

sites and objects on state land, registration and protection, 81-2504

state historical register authorized, contents, 81-2507

violations as misdemeanor, penalty, 81-2511

HOISTING ENGINES

License required for operation of engine, 69-1601

application and fee for license, 69-1602

classes of engineers, 69-1601

classifications of engineers, qualifications for each classification, 69-1601.1

emergency operation without license, 69-1601

equipment included in licensing provisions, 69-1601.1

overhead trolley cranes used in construction included, 69-1601.1

examinations required of engineers, periodic reexamination, 69-1601.1

exemptions from requirement, 69-1603

revocation of license, grounds, 69-1602

scope of license, 69-1603

term and renewal of license, 69-1602

INDEX

References are to Title and Section numbers

HOLIDAYS

- Bank closing, holidays on which permitted, 19-107
- Good Roads Day, annual observance, 32-4401
- School holidays and days of special observance, 75-7406, 75-7407
 - unaffected by declared legal holidays, 19-108
- Veterans' Day, 19-107

HOME GUARD

- See MILITIA AND MILITARY

HOMES FOR THE AGED

- See NURSING HOMES

HOME SOLICITATION SALES

- See DOOR-TO-DOOR SALES

HOMESTEADS

- Decedents' estates, allowance, 91A-2-401
- Liberal laws to be enacted, 1972 Const., XIII, 5

HOMICIDE

- Contractual and other benefits, when barred by homicide, 91A-2-803
- Definitions and degrees of criminal homicide, 94-5-101
- Deliberate homicide, elements of offense, punishment, 94-5-102
 - death sentence, circumstances requiring imposition of, 94-5-105
- Mitigated deliberate homicide, elements of offense, punishment, 94-5-103
- Murder, 94-5-101 to 94-5-103
- Negligent homicide, elements of offense, punishment, 94-5-104
- State criminal jurisdiction, 95-304
- Time limitation on prosecution, 94-1-106 (1)—See LIMITATION OF ACTIONS
- Venue, death and cause of death in different counties, 95-406

HORSE RACING

- Board of horse racing created, composition, appointment, removal, terms and qualifications of members, 82A-1602.13
 - administrative services provided by department, 82A-1603
 - allocation to department for administrative purposes, 82A-1602
 - chairman of board, selection, 62-503
 - continuation in office of board members, 82A-1606
 - duties of board, 62-505
 - employment of personnel for board, 82A-1604
 - expenses of board, 62-503
 - legal assistance in hearings by board, 82A-1604
 - per diem and expenses of members, 63-503
 - quorum of board, 62-503
 - records of board kept by department, open to public, 62-504
 - retention of functions by board, 82A-1605
 - supervisory powers of board, 62-506
- Days of week when racing permitted, 62-508
- Definition of terms, 62-502
- Liability insurance required of licensees, 62-510
- Licensees
 - cancellation or revocation of license, 62-507
 - conviction of crime precluding issuance of license, 62-507
 - fairs to comply with license requirements, 62-507
 - participants in race meet to have license, fee, 62-505
 - penalty for unlicensed operation, 62-508
 - race meets, license required for, 62-507
- Montana bred horses, special races for, 62-509
- Parimutuel betting permitted, restrictions, 62-511
 - payments to department by licensee, 62-514
 - percentage of pool retained by licensee, 62-512
 - tax on bets withheld by licensee, 62-513

INDEX

References are to Title and Section numbers

HORSE RACING (Continued)

- Parimutuel betting permitted (Continued)
 - tax on gross receipts, collection and disposition, 62-514
 - unclaimed money paid to department, deposit, 62-515
- Rules and regulations governing race meets and parimutuel system, 62-505
- Supervisory powers of board, 62-506
- Violations of act as misdemeanor, 62-508
- Visitations and inspections by board, 62-506

HOSPITAL DISTRICTS

See COUNTIES, Public hospital districts

HOSPITALS AND RELATED FACILITIES

- Child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS,
Abuse of children
- Consent by minors to medical or surgical care, 69-6101 to 69-6105—See CHILDREN
AND MINORS
- Construction, expansion, remodeling or alteration of facility, approval of depart-
ment required, 69-5212
- Counties, powers of commissioner, 16-1008A.
- Discrimination prohibited in subsidized facilities, 69-5313
- Extended care facilities defined, 69-5201
- Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent,
94-1831
- Freedom of choice of physician protected, 69-5217
- In-hospital medical staff committees, information available to, 69-6301 to 69-6304
- Injunction for protection of health and welfare, 69-5220
- Joint county hospitals authorized, 16-1040
 - definition of terms, 16-1039
 - state aid in construction, application for, 69-5312
 - terms of contract between counties, 16-1041
- License required for operation of facility, 69-5203
 - application for license, procedure, 69-5205
 - definition of terms, 69-5201
 - denial, suspension or revocation of license, grounds, 69-5209
 - procedure for denial, suspension or revocation, 69-5210
 - federal facilities exempt from requirement, 69-5202
 - fee for license, 69-5204
 - inspection of hospital and issuance of license, 69-5206
 - penalty for violations of licensing chapter, 69-5221
 - records and reports required of facilities, 69-5219
 - rules and standards to be promulgated by department, 69-5213
 - unlawful use of term "nursing," 69-5203.1
- Long-term care facilities, 69-5201 to 69-5221—See LONG-TERM CARE FACILI-
TIES
- Malpractice, statute of limitations, 93-2624
- Occupational disease reports, contents and filing, 69-4204
- Phenylketonuria test required at birth, 69-4116
- Survey and construction of hospitals
 - application for construction projects, agencies entitled to file, 69-5309
 - hearing and forwarding of application to federal agency, 69-5310
 - consolidated facilities serving two or more counties, application and construction,
69-5312
 - contracts with federal agencies authorized, 69-5302
 - definition of terms, 69-5301
 - department of health and environmental sciences as principal agency, 69-5302
 - powers and duties of department, 69-5303
 - federal funds, acceptance and use, 69-5311
 - plans for construction of facilities, preparation and submission, 69-5305
 - publication and hearing before submission, 69-5306
 - relative need specified in plan, 69-5308
 - rules for administration of chapter, 69-5304
 - standards for maintenance and operation of subsidized facilities, 69-5307
- Unemployment compensation coverage of employees, 87-110
- Vital statistics information to be furnished by institution, 69-4430

INDEX

References are to Title and Section numbers

HOTELS AND MOTELS

- Co-operative agreements for enforcement of regulations, 34-306
- Declaration of policy of regulatory law, 34-301
- Definition of terms, 34-302
- Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
- Inspections by state and local officers, 34-307
- License required, 34-303
 - cancellation of license, procedure, 34-305
 - denial of license, procedure, 34-305
 - duration of license, 34-304
 - fee for license, 34-304
 - superseding other fees, 34-310
 - penalty, 34-309
- Penalty for violation of act or regulations, 34-309
- Rules, promulgation, 34-306

HOUSEBOATS AND FLOATING CABINS

See MOTORBOATS

HOUSE-TO-HOUSE SALES

See DOOR-TO-DOOR SALES

HOUSE TRAILERS

- Construction standards, compliance with required, 69-2123
 - fees for inspections, 69-2124
 - legislative findings and policy, 69-2122
 - rules and regulations establishing standards, 69-2122
 - testing of models, 69-2124
- Fees in addition to registration and license fees, 32-3305
- Taxation of, 84-6601 to 84-6607—See TAXATION, Mobile homes

HOUSING

- Housing authority bonds as security for deposits of public funds, 35-145

HOUSING ACCOMMODATIONS

- Discriminatory practices unlawful, 64-306—See CIVIL RIGHTS, Discriminatory practices
- “housing accommodation” defined, 64-305

HOUSING ACT OF 1975

- Board of housing, existence, composition, appointment of members, 82A-907
 - allocated to department of community affairs for administrative purposes, 82A-907 (5)
 - designated as quasi-judicial board, 82A-907 (4)
 - election of officers, 82A-907 (3)
 - powers of board, 35-504, 35-505
 - financing programs and powers, 35-505
 - general powers, 35-504
 - staff and services provided by department, assessment of cost to board, 82A-907 (6)
- Citation of act, 35-501
- Definition of terms, 35-503
- Financing of housing developments, 35-506 to 35-523
 - accounts of board, 35-523
 - capital reserve account in state sinking fund, 35-523 (2), 79-410 (3)
 - moneys constituting account, 35-523 (2) (b)
 - housing finance account in state bonds proceeds and insurance clearance fund, 35-523, 79-410 (6)
 - continuous appropriation of balances, 35-523 (1) (c)
 - funds deposited in account, 35-523 (1) (b)
 - revolving account in state revolving fund, 35-523 (3)
 - funds constituting account, expenditure, repayment, 35-523 (3) (b), (c)

INDEX

References are to Title and Section numbers

HOUSING ACT OF 1975 (Continued)

Financing of housing developments (Continued)

- annual audit of books and records of board, 35-521
- housing sponsors, financial supervision by board, specific powers, 35-507
- preliminary findings and procedure required of board, 35-506
- revenue bonds and notes of board, 35-508 to 35-522
 - capital reserve account in state sinking fund, 35-523, 79-410 (3)
 - appropriated funds as advance to board, repayment, 35-517 (2)
 - maintenance of account with appropriated funds, 35-517
 - moneys constituting capital reserve account, 35-523 (2)
 - payments into account, 35-516
- credit of state not pledged, provision on face of instrument to so state, 35-520
- immunity of board members from liability, 35-511
- impairment of obligations of notes and bonds, pledge against, 35-524
- interest, limitation of rate of, 35-508 (5)
- issuance by resolution of board, 35-508 (1), (4)
- limit of principal amount of notes and bonds outstanding, 35-508 (5)
- negotiability of notes and bonds, 35-514
- payable out of revenues, assets, or moneys of board, 35-508 (3)
- pledge of particular revenues, assets, or moneys by agreement authorized, 35-508 (3)
- pledge of revenues, moneys, or property valid against claims against board, 35-510
- purchase of notes and bonds by board authorized, cancellation, 35-512
- purposes for which issued, 35-508 (1), (2)
- recording of resolution or other instrument not required, 35-510
- refunding obligations authorized, sale or exchange, application of sale proceeds, 35-518, 35-519
- resolution of board authorizing notes or bonds, authorized provisions of, 35-509
- sale at public or private sale, price determined by board, 35-508 (4)
- tax exemption of board obligations, 35-522
- terms of bonds and notes, 35-508 (4)
- trust indenture authorized, authorized provisions of, 35-513

Legislative declaration of policy and purpose, 35-502

Powers of department, 35-526

“department” defined, 35-503 (4)

Title and citation of act, 35-501

HUSBAND AND WIFE

Abandonment of wife without support as misdemeanor, 94-301

Actions prosecuted and defended in married person's own name, 36-110

married persons as parties, 93-2803, 93-2804

Alienation of affections

- acts within state not to give rise to cause of action, 17-1203
- cause of action abolished, 17-1201
- litigation and threat of litigation prohibited, 17-1204
- penalty for bringing action, 17-1206
- settlement and compromises void, 17-1205

Allowances to surviving spouse, 91A-2-201 to 91A-2-405—See DECEDENTS' ESTATES

Assignment of wages to wage broker, consent of spouse required, formal requirements, 41-1506

Conciliation of controversies

- agreement between parties, reduction to writing, 36-204
- budget for conciliation court, 36-203
- citation of act, 36-201
- confidential nature of communications, 36-203
- counselor for conciliation, appointment and duties, 36-203
- counties in which chapter applies, determination by district judges, 36-202
- court of conciliation, designation, 36-203
- powers of court, 36-205

INDEX

References are to Title and Section numbers

HUSBAND AND WIFE (Continued)

Conciliation of controversies (Continued)

- definition of terms, 36-202
- discretionary jurisdiction where no children involved, 36-204
- fees not charged in conciliation proceedings, 36-204
- filing of petition for conciliation, 36-204
- hearings, time and place, 36-204
- judge of conciliation court, selection, 36-203
- jurisdiction of courts, 36-203
- orders for conduct of parties, 36-204
- petition for conciliation, form, contents, and filing, 36-204
- powers of conciliation court, 36-205
- privacy of hearings, 36-203
- probation officer, assistance to conciliation court, 36-203
- procedure for conciliation, 36-204
- purposes of chapter, 36-202
- reference of controversy to counselor, 36-203
- short title of act, 36-201
- stay of other proceedings during attempted conciliation, 36-204

Contracts, right of married person to make, 36-130

Criminal proceedings, competency as witnesses, 95-3011

Debts of married person contracted before marriage, spouse not liable for, 36-117

Earnings and accumulations of married person not liable for debts of spouse, exceptions, 36-114

husband and wife living apart, 36-115

Gambling losses, actions for recovery by dependent, 94-8-418 to 94-8-421—See GAMBLING

Individual property of married person, conveyance without consent or signature of spouse, 36-111

contracts in respect to individual property, spouse not liable on, 36-129

inventory of individual personal property, recording, formal requirements, 36-112

filing of inventory as notice and prima facie evidence of title, 36-113

inventoried property, how far liable for debts, 36-118

proof of title to individual property, method, 36-112

Judgment for or against married person, 93-4707

Married minors, consent to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS

Married person as fiduciary, acts binding without assent of spouse, 36-127

Nonsupport of spouse as criminal offense, punishment, 94-5-608

aggravated nonsupport, elements of offense, punishment, 94-5-608 (2) (3)

fine or forfeiture for benefit of spouse, authority of court, 94-5-608 (4)

Sex offenses, exclusion of spouse as victim, 94-5-502 to 94-5-506—See CRIMINAL OFFENSES, Sex offenses, above

Sue and be sued, right of married person, 36-128

Support, duties of husband and wife to each other, 36-103

liability of spouse for support provided by others, 36-119

not liable when abandoned by or living separately from spouse, exceptions, 36-120

Work and labor of married person, presumption, liability for certain debts, 36-116

I

ICE CREAM

See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products, 3-2488 to 3-24-137

IDENTIFICATION CARDS

See HIGHWAY PATROL, Identification cards, 31-170 to 31-174

ILLEGALITY

Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)

INDEX

References are to Title and Section numbers

ILLEGITIMATE CHILDREN

- Disclosure of illegitimacy, court order required for, 69-4422
- Legitimation, new birth certificate issued after, 69-4423

IMPEACHMENT OF PUBLIC OFFICERS

- Conviction, vote required, 1972 Const., V, 13
- Governor or lieutenant governor on trial, chief justice to preside, 95-2802
- Grounds for impeachment, 95-2801
- Initiation of proceedings in house of representatives, vote required, 1972 Const., V, 13; 95-2802
- Officers subject to impeachment, 1972 Const., V, 13; 95-2801
- Removal from office upon conviction, 1972 Const., V, 13
- Senate as tribunal, vote required for conviction, 1972 Const., V, 13; 95-2802

IMPROVEMENTS

- Limitation of actions for damages from construction of improvements to real property, 93-2619 to 93-2623

INALIENABLE RIGHTS

- Enumeration of rights of persons, 1972 Const., II, 3

INCAPACITATED PERSONS

See also GUARDIANSHIPS

- Guardian ad litem, appointment, 91A-1-403
 - not required in certain proceedings, 91A-5-309
- Guardians of incapacitated persons, 91A-5-301 to 91A-5-313
 - concurrent jurisdiction of courts, 91A-5-313
 - court appointment of guardian, 91A-5-303 to 91A-5-305
 - acceptance of appointment as submission to jurisdiction of court, 91A-5-305
 - attorney or appropriate official appointed for incapacitated person, 91A-5-303 (2)
 - consolidation of guardianship and protective proceedings, 91A-5-102—See PROTECTIVE PROCEEDINGS
 - dismissal of proceedings by court, 91A-5-304
 - examination of incapacitated person by physician, 91A-5-303 (2)
 - liability of guardian for acts preceding termination of guardianship, 91A-5-306
 - notice to guardian, how given, 91A-5-305
 - order of appointment, findings required, 91A-5-304
 - procedure generally, 91A-5-303
 - rights of incapacitated person protected, 91A-5-303 (2)
 - subject matter jurisdiction, 91A-1-302
 - temporary guardian, 91A-5-310
 - termination of guardianship by death, incapacity or resignation of guardian, 91A-5-306
 - venue of proceedings, 91A-5-302
 - visitor appointed, qualifications, duties, 91A-5-303, 91A-5-307, 91A-5-308
- delegation of powers by guardian, limitations, 91A-5-104
- emergency exercise of guardianship powers by court, 91A-5-310
- incapacity terminated, resignation or removal of guardian, 91A-5-307
- jurisdiction over guardianship proceedings, 91A-1-302, 91A-5-102
 - concurrent jurisdiction, 91A-5-313
 - personal jurisdiction, 91A-5-305
- married person as guardian, 36-127
- notices required in guardianship proceedings, 91A-5-305, 91A-5-309
- powers and duties of guardian, 91A-5-312
- proceedings subsequent to appointment, jurisdiction and venue, 91A-5-313
- qualifications of guardian, priorities, 91A-5-311
- removal of guardian, petition, grounds, 91A-5-307
- resignation of guardian, petition, acceptance, 91A-5-307
- rights of ward protected in removal or resignation proceedings, 91A-5-307

INDEX

References are to Title and Section numbers

INCAPACITATED PERSONS (Continued)

Guardians of incapacitated persons (Continued)

- temporary guardians, when appointed, maximum term, powers and duties, 91A-5-310
 - court exercising guardianship powers in emergency, 91A-5-310
- testamentary appointment, when effective, 91A-5-301
 - acceptance of guardian under will probated in foreign state, 91A-5-301 (3)
 - court appointment of testamentary nominee or other suitable person, 91A-5-301 (4)
 - objections as terminating testamentary appointment, 91A-5-301 (4)
- venue of proceedings, 91A-5-302
- visitor in guardianship proceedings, 91A-5-303, 91A-5-307
 - definition, 91A-5-308

"Incapacitated person" defined, 91A-1-201 (19)

Power of attorney contemplating disability of principal unaffected by disability, 91A-5-501

other powers of attorney not revoked until notice of death or disability, 91A-5-502

Protective proceedings in relation to estate and affairs of incapacitated person, 91A-5-401 to 91A-5-431—See **PROTECTIVE PROCEEDINGS**

Visitor in guardianship proceedings, 91A-5-303, 91A-5-307

- definition, 91A-5-308

INCEST

Elements of offense, punishment, 94-5-606

INCOME TAX

Charitable trusts treated as foundations or split-interest trust, prohibited acts, amendment of trust instruments, 86-707—See **CHARITABLE TRUSTS**

Corporation income tax, 84-6901 to 84-6908—See **TAXATION**, Corporation income tax

Deduction from income tax liability for gubernatorial campaign fund, 23-4901 to 23-4906—See **ELECTIONS**, Gubernatorial campaign fund

Private foundation organized as nonprofit corporation, compliance with federal tax laws required, 15-2398

INDIANS

Co-ordinator of Indian affairs, office created, appointment, term, 82-2702

- duties, 82-2701, 82-2703
- legislative declaration of policy, 82-2701

Criminal jurisdiction of Flathead Indian country

- county commissioners' consent required for assumption of jurisdiction, 83-802
- customs and culture of Indians to be preserved, 83-805
- date of assumption of jurisdiction, 83-803
- obligation of state to assume jurisdiction, 83-801
- proclamation of governor assuming jurisdiction, 83-802
- resolution of tribes requesting state jurisdiction, 83-802
- rights, privileges and immunities preserved, 83-804
- withdrawal of tribal consent to state jurisdiction, 83-806

Curriculum of certain public schools to include Indian studies, 75-6129, 75-6130

- definition of terms, 75-6130
- duties of boards of trustees, 75-6131
- legislative declaration of policy, 75-6129
- other schools encouraged to comply with requirements, 75-6132
- teachers to be qualified in certain schools, 75-6131

Department of intergovernmental relations to administer Indian affairs, 82A-901.1

Education, preservation of cultural integrity, 1972 Const., X, 1

Lands under jurisdiction of Congress, 1972 Const., I

Sale of imitation Indian articles

- authentic articles, designation of, 85-303
- definitions, 85-301
- imitation articles to be identified as such, 85-302
- violation, misdemeanor, 85-304

INDEX

References are to Title and Section numbers

INDIANS (Continued)

Schools, compulsory attendance by children, 75-6309

University system, admittance to without payment of fees, 75-8705

INDICTMENT

See GRAND JURY, 1972 Const., II, 20; 95-1401 to 95-1423, 95-1501 to 95-1506

INDUSTRIAL DEVELOPMENT

Bonds, issuance by county or municipality, terms and sale, 11-4103

proceeds of sales, use, 11-4107

refunding of bonds, 11-4106

security of bondholders, provisions for, 11-4104

Costs, determination by governing body, 11-4105

elements included in cost, 11-4107

Definition of terms, 11-4101

Department to give advice and information, 11-4110

Lease of project, terms and conditions, 11-4105

cost of project, elements included, 11-4107

Mortgage to secure bonds, terms permitted, 11-4104

Powers of municipality or county, 11-4102

cumulative nature of powers, 11-4109

Promotion of new economic enterprises, 82-3705.3—See PLANNING AND ECONOMIC DEVELOPMENT

State planning board to give advice and information, 11-4110

Taxation of property, 11-4108

Tax levy by city, county, or town authorized upon affirmative vote of qualified voters, 11-4111

use of funds derived from tax levy, 11-4111 (2), (3)

INDUSTRIAL HYGIENE

Prevention of occupational disease, 69-4206 to 69-4221—See OCCUPATIONAL HEALTH

Reports on occupational disease by physicians and hospitals, 69-4204

INDUSTRIAL SCHOOL

See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

INFORMATION

See CRIMINAL PROCEDURE, Information, 95-1301 to 95-1303; 95-1501 to 95-1506

INHERITANCE TAX

See also DECEDENTS' ESTATES, Estate tax

Adjustments of tax on payment of debts by legatee, 91-4418

Application for determination of tax, documents required to be provided, 91-4468

interest requiring determination of tax, 91-4469 (1) (c)

joint tenant with right of survivorship, 91-4469 (1) (b)

life tenant, 91-4469 (1) (a)

procedure after filing of application, 91-4468, 91-4469

Apportionment of tax among persons interested in estate, 91A-3-916 (2)

actions for recovery of tax, 91A-3-916 (7), (8)

"person interested in the estate" defined, 91A-3-916 (1) (c)

temporary interest and remainder, tax charged to corpus without apportionment, 91A-3-916 (6)

withholding of tax from distributable property, recovery of deficiency, 91A-3-916 (4) (a)

Charitable exemption, 91-4414

Clear market value, tax imposed on, 91-4407

Consent of department of revenue to transfer of real or personal property subject to tax, 91A-3-1010

Deductions, 91-4407

Determination of tax by department, appeal, 91-4468

INDEX

References are to Title and Section numbers

INHERITANCE TAX (Continued)

- Discount for payment within eighteen months, procedure in case of refund, 91-4416, 91-4418
- Estimated amount of tax, deposit with clerk of court, 91-4418
- Exemptions from tax, 91-4414
 - allowances and exempt property of surviving spouse and children included in computing exemptions, 91A-2-405
- Forms and blanks furnished by department, 91-4448
- Information furnished by personal representative of decedent, 91-4468
- Inventories of estates to be filed with department of revenue, 91A-3-706, 91A-3-707
- Lien of tax on property transferred, 91-4415
- Nonresident decedents, 91A-4-202—See DECEDENTS' ESTATES, Nonresident decedents
- Personal representative, powers in collection and payment of tax, 91-4417
- Proceeds of tax, disposition, 84-1901
- Sale of estate property, inventory and statement of values to be delivered to department of revenue, 91A-3-715.1
- State department of revenue, tax paid to, 91-4415, 91-4450
- Waiver of tax of surviving spouse, 91-4414.1

INITIATIVE AND REFERENDUM

- Alcoholic beverages, local option upon initiative of county voters, 4-1-206
- Arguments advocating approval or rejection of initiated or referred measures, 37-104.2 to 37-104.10
 - arguments contained in pamphlet distributed to voters, 37-107
 - certain types of arguments excluded, 37-104.10
 - civil or criminal libel, authors not relieved from liability for, 37-104.10
 - committee advocating approval, appointment, composition and submission of argument, 37-104.2
 - committee advocating rejection of initiated measure, appointment, composition and submission of argument, 37-104.6
 - committee advocating rejection of referred measure, appointment, composition and submission of argument, 37-104.3
 - initiated measures, submission of argument by proponents, 37-104.5
 - length of arguments limited, required signatures, 37-104.7
 - rebuttal arguments, length, time of filing, 37-104.9
 - referred measure on petition for referendum, submission of argument by proponents, 37-104.4
 - time for submission of arguments, 37-104.8
 - typewritten form required, 37-104.8
- Attorney general's summary of measures for placement on ballot, 37-104.1
- Constitutional revision
 - initiative for call of convention or amendment, 1972 Const., XIV, 2, 9, 10; 37-201 to 37-203
 - provisions of Article III not applicable, 1972 Const., III, 8
 - referendum on call of convention or amendment, 1972 Const., XIV, 1, 8
- Counties, 37-301 to 37-311—See COUNTIES, Initiative and referendum
- Elections on measures, general or special, 1972 Const., III, 6
- Initiative petitions, contents, signing, filing, 1972 Const., III, 4
 - appropriations of money excepted, 1972 Const., III, 4
 - constitutional convention or amendment, initiative for, 1972 Const., XIV, 2, 9, 10; 37-201 to 37-203
 - Article III provisions not applicable, 1972 Const., III, 8
 - gambling may be authorized, 1972 Const., III, 9
 - local or special laws excepted, 1972 Const., III, 4
- Local government, powers reserved to qualified electors of local government unit, 1972 Const., XI, 8
 - intergovernmental co-operation, initiative or referendum for, 1972 Const., XI, 7
 - self-government charters, initiative for, 1972 Const., XI, 5
- Number of qualified electors, how determined, 1972 Const., III, 7
- Printing and distribution of measures, bids required, specifications, 37-107
- Referendum, order by legislature or petition, 1972 Const., III, 5
 - appropriation of money excepted, 1972 Const., III, 5

INDEX

References are to Title and Section numbers

INITIATIVE AND REFERENDUM (Continued)

- Referendum, order by legislature or petition (Continued)
 - constitutional convention or amendment, submission by referendum, 1972 Const., XIV, 1, 8
 - provisions of Article III not applicable, 1972 Const., III, 8
 - signing and filing of petition, 1972 Const., III, 5
- Reservation of powers by the people, 1972 Const., V, 1
- Statement by secretary of state for referendum measures, 37-104.1
- Suspension of referred act, requirements, 1972 Const., III, 5

INJUNCTIONS

- Appeal pending, suspension or modification of injunction, M. R. Civ. P., Rule 62(c)
- Consumer loan act violations, enjoining, 47-227
- Cosmetology licensing act, enjoining violations, 66-817
- Dairy product violations, enjoining, 3-2496
- Dentistry, enjoining unauthorized practice, 66-911
- Medical Practice Act, relief from violation of, 66-1045
- Psychology, enjoining unlawful practice, 66-3214
 - prosecution by board of examiners, 66-3207
- Public utility litigation, restraining order issued upon application of consumer counsel, 93-4215 (2)
- Security, authority of court to require, exceptions, 93-4207
 - divorce proceedings as exception, 93-4207
 - state, county or political subdivisions as plaintiff, 93-4207
- Statutory provisions unchanged by rules, M. R. Civ. P., Rule 65
- Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court
 - ex parte proceedings in supreme court, M. R. App. Civ. P., Rule 40
- Tramway safety requirements, compelling compliance with, 69-6613

INQUESTS

- Coroner's inquests, 95-803 to 95-809—See COUNTY CORONER, Inquests

INSECTICIDES

- See PESTICIDES, 27-213 to 27-245

INSECTS

- Aquatic insects, commercial exportation prohibited, 26-708
- Cropland spraying program, 3-3501 to 3-3506—See AGRICULTURE, Cropland spraying program
- Forestry control, 28-204 to 28-207—See FORESTS AND FORESTRY, Insect pests

INSPECTION OF BOILERS

- Certificates of inspection for boilers, 69-1511
 - exempt boilers, 69-1515
 - fees for inspection, 69-1512
 - operation without license unlawful, 69-1517
- Division of workers' compensation to formulate definitions, rules and regulations, standards, 69-1501 (1)
- Engineers, 69-1508 to 69-1517—See BOILERS, Engineers, license required
- Inspectors of boilers appointed by division, 69-1501 (2)
 - free access to be given by owner, refusal as misdemeanor, penalty, 69-1507
 - inspectors of boiler insurance companies as special inspectors, 69-1501 (3)
 - new boilers, 69-1503
 - opening boiler between inspections, notice to division required, 69-1503 (1)
 - operating engineer to assist inspector, revocation or suspension of license for refusal, 69-1507
 - operation of boiler without certificate prohibited, penalty, 69-1503 (1)
 - special permit for boilers of special design or construction, 69-1503 (3)
 - term and compensation fixed by division, 69-1501 (2)
 - violations, penalty, 69-1503 (1)

INDEX

References are to Title and Section numbers

INSPECTION OF MOTOR VEHICLES

See MOTOR VEHICLES, Inspection of motor vehicles

INSTALLMENT SALES ACT

Complaints regarding violations, 74-605

Contents of installment contract, 74-607

Contracts

containing in more than one document, when authorized, 74-607

delivery to buyer, 74-607

refinancing, 74-610

required contents, 74-607

writing, requirements, 74-607

Definitions, 74-602

Delinquency charge, 76-607

Department of business regulation, powers and duties, 74-606

investigations upon initiative of department or complaint of retail buyer, 74-605

rules, adoption authorized, distribution of copies, 74-606 (a)

subpoena power, 74-606 (b) to (d)

Filling in of blank spaces after signing of contract, 74-607

Finance charges

charge accounts, maximum charges on, 74-608

computation, method, 74-608

industrial or construction equipment, 74-608 (2)

maximum on motor vehicles, 74-608

maximum on service and goods other than motor vehicles, 74-608

Insurance, requiring of buyer, when authorized, 74-607

Investigative power of superintendent, 74-605

License of sales finance company

application, 74-603

banks, trust companies or savings and loan associations, excepted, 74-603

expiration, 74-603

fee, 74-603

license not transferable or assignable, 74-603

posting of license on premises, 74-603

required, 74-603

suspension, revocation or failure to renew

grounds, 74-604

hearing, 74-604

judicial review, 74-604

Prepayment, refund, 74-609

Refinancing of contract, 74-610

Refunds on prepayments, 74-609

Rules and regulations, 74-606

Secured transactions, application to, 87A-9-203

Secured Transactions chapter, effect on installment act, 87A-9-201

Short title, 74-601

Subpoena power of superintendent, 74-606

Transfer of equity in goods by buyer, 74-607

Violations of act, penalties, 74-611

Waiver of provisions of act unenforceable and void, 74-612

INSURANCE

Adjusters

affidavit as to lost, stolen or destroyed license, 40-3331

attorneys excluded from definition, 40-3306

definition of term, 40-3306

examinations by commissioner, 40-2714

conduct of examination, 40-2715

expenses of examination, 40-2717

reports on examination, 40-2716

fees payable to commissioner, 40-2726

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Adjusters (Continued)

- license required, 40-3327
 - acting without license, penalty, 40-3332
 - continuation of license, 40-3328
 - expiration of license, 40-3328
 - qualifications of licensee, 40-3327
 - refusal to continue license, 40-3329
 - return of license after expiration, suspension or revocation, 40-3331
 - revocation of license, 40-3329
 - procedure following revocation, 40-3330
 - suspension of license, 40-3329
 - procedure following suspension, 40-3330
- out of state adjusters, when license not required, 40-3327

Advisory board contract, offer as inducement to insurance prohibited, 40-3513

Agents and solicitors

- affidavit as to lost, stolen or destroyed license, 40-3331
- appointment by insurer required, 40-3307
 - continuation of appointments, 40-3317
 - filing of appointments, 40-3317
 - termination of appointment, 40-3317
 - rights of agent following termination, 40-3318

Consumer Loan Act lender not to require insurance through particular agent, 47-214

corporations, licensing as agents, 40-3310

countersignature of policy required, 40-2822

commission of resident agent on policy originating outside state, 40-2824

issuance of policy at home or branch office, 40-2825

nonresident agent may not sign, 40-3336

salaried personnel prohibited from countersigning, 40-2823

definition of terms

"agent," 40-3302

"life insurance agent," 40-3303

"solicitor," 40-3304

employees of agents and insurers excluded from definition, 40-3305

examination of affairs by commissioner, 40-2714

conduct of examination, 40-2715

expenses of examination, 40-2717

reports on examination, 40-2716

exchange of business, 40-3325

firms, licensing as agents, 40-3310

fraternal benefit society agents, 40-5344 to 40-5349—See Fraternal benefit societies, agents, below

group insurance, acts to implement excluded from definition, 40-3305

license required, 40-3307

acting without license, penalty, 40-3332

application for license, contents and filing, 40-3312

association of agents, licensing, 40-3311

contents of license, 40-3315

continuation of licenses, 40-3328

corporations, licensing, 40-3310

countersigning of policies, by resident agents only, 40-3336

display of license in place of business, 40-3323

examination of applicants for license, 40-3313

conduct of examination, 40-3314

existing licenses, expiration and renewal, 40-2612

expiration of license, 40-3328

fees payable to commissioner, 40-2726

firms, licensing, 40-3310

forms prescribed and furnished by commissioner, 40-3307

issuance of license, 40-3315

number of licenses required of agent, 40-3316

qualifications of licensees, 40-3308

life insurance agents, 40-3309

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Agents and solicitors (Continued)

license required (Continued)

- reciprocity as to nonresident agents, 40-3333 to 40-3335
- refusal to continue license, 40-3329
- return of license after expiration, suspension or revocation, 40-3331
- revocation of license, 40-3329
 - procedure following revocation, 40-3330
- separate license required for each life or disability insurer, 40-3316
- service of process on nonresident agents, 40-3337
- suspension of license, 40-3329
 - procedure following suspension, 40-3330
- temporary licenses, issuance, 40-3319
 - rights under temporary license, 40-3320

misappropriation of funds by agent as larceny, 40-3324

nonresident agent subject to insurance code, 40-3338

place of business to be maintained in state, 40-3323

premiums, reporting and accounting for, 40-3324

records to be maintained by agents, 40-3323

surplus line insurance, 40-3419

retaliatory tax provisions, 40-2826

revocation or suspension of insurer's certificate, effect on agent's authority, 40-2816

salaried employees of insurers excluded from definition, 40-3305

scope of chapter, 40-3301

sharing of commission, 40-3325

solicitors, rights and relationship with agent, 40-3321

surplus line agent, license, fee and bond, 40-3414

authority under license, 40-3415

revocation of license, 40-3422

vending machine licenses, 40-3322

Amount of insurance on one risk by one insurer limited, 40-2909

Annuity contracts, 40-3818 to 40-3825—See also Life insurance, below

deferred annuities incidental to life insurance not included in provisions, 40-3818

dividends, provision for, 40-3823

entire contract included in written contract, 40-3821

exemption from securities act, 15-2004

grace period for payment of premiums, 40-3819

guaranty and continuity of annuity obligation, 40-5801 to 40-5819—See LIFE AND

HEALTH INSURANCE GUARANTY ASSOCIATION

incontestability clause, 40-3820

misstatement of age or sex, provision for adjustment of payments, 40-3822

participating contracts, provision for dividends, 40-3823

reinstatement provisions, 40-3824

reversionary annuities, standard provisions, 40-3825

single premium contracts, inapplicable provisions omitted, 40-3818

standard provisions required, 40-3818

Application for insurance

admissibility in evidence of application, 40-3712

alteration of application prohibited, exception, 40-3712

form of application, approval required, 40-3714

grounds for disapproval, 40-3715

insured must apply for life or disability insurance, exceptions, 40-3711

statements and descriptions in application, effect on contract, 40-3713

Arrest bond certificates, 95-1121 to 95-1123

Automobile insurance, reimbursement for total loss to be based on actual replacement value, 40-4404

Benefit certificate, offer as inducement to insurance prohibited, 40-3513

Benevolent associations

agents, appointment and licensing, 40-4909

officers as agents, 40-4910

amendment of articles, rules or contract, filing, 40-4907

annual license, expiration and renewal, 40-4918

annual statement of association, contents and filing, 40-4916

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Benevolent associations (Continued)

assessments of members

death benefit, assessment to pay, 40-4915

expenses, assessments to cover, 40-4913

death claims, numbering and payment, 40-4914

assessment of members for payment, 40-4915

definition, 40-4902

exemption from general provisions of code, 40-2610

expenses, annual maximum, 40-4913

foreign associations excluded, 40-4906

laws applicable, 40-4901, 40-4917

"member" defined, 40-4903

"membership contract" defined, 40-4904

minimum membership, 40-4912

new associations prohibited, 40-4906

officers of association

agents, acting as without license, 40-4910

definition, 40-4905

number of officers permitted, 40-4908

receipt or evidence of payment to association to be issued, 40-4911

scope of chapter, 40-4901

treasurer, bond, 40-4908

Binders for temporary insurance, effect, 40-3726

Boycotts prohibited, 40-3508

Casualty insurance

definition, 40-2905

reserve for unearned premiums, 40-3005

sovereign immunity, waiver of defense required

policies issued to public agencies, 40-4402

state-owned properties, 40-4401

unfair discrimination prohibited, 40-3512

uninsured motorist coverage included unless rejected by insured, 40-4403

Claims for losses

acts by insurer not deemed waiver of defenses, 40-3733

forms for proof of loss to be furnished by insurer, 40-3732

Coercive practices prohibited, 40-3508

Commercial air operators required to carry insurance, 1-314

amount set by aeronautics commission, 1-315

continuation in force required, 1-318

evidence of insurance deposited with commission, 1-316

copies of policies acceptable as evidence, 1-317

rules established by commission, 1-319

unauthorized insurers' policies acceptable, 1-321

violation of act as misdemeanor, 1-320

Commissioner of insurance—See Department of insurance, below

Common owners, transfer of interest by one does not avoid insurance, 40-3708

Companies—See Insurers, below

Compliance with applicable provisions of code required, 40-2609

Consultants, license required, 40-3340

acting without license as misdemeanor, punishment, 40-3340

actuary exempt, 40-3348

application for license, fee, expiration, 40-3341

attorney at law exempt, 40-3348

certified public accountant exempt, 40-3348

examination of applicant, when required, 40-3343

exemptions, 40-3348

fees for services to be evidenced by written memorandum, 40-3345

services for which fees may not be charged, 40-3346

issuance of license by commissioner, 40-3342

qualifications for license, 40-3343

recommendation of insurance, annuities or securities in which consultant has interest prohibited, 40-3347

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

- Consultants, license required (Continued)
 - revocation, suspension or refusal to issue license, grounds, 40-3344
 - short title, 40-3339
- Consumer loan act, restrictions and limitations concerning with regard to consumer loans, 47-214
- County funds, use to pay indemnity insurance premiums, 16-1001
- Coverages not mutually exclusive, 40-2901
- Credit life and disability insurance
 - amount of insurance permitted, 40-4206
 - application for insurance, copy delivered to debtor, 40-4209
 - authorized insurers only to issue policies, 40-4212
 - citation of chapter, 40-4202
 - claims for losses, 40-4213
 - competition not prohibited or discouraged, 40-4201
 - Consumer Loan Act, insurance required under, 47-214
 - contents of policy or certificate, 40-4208
 - definition of terms, 40-4204
 - enforcement powers of commissioner, 40-4215
 - forms, filing, approval and withdrawal, 40-4210
 - forms of insurance enumerated, 40-4205
 - judicial review of commissioner's orders, 40-4216
 - liberal construction of chapter, 40-4201
 - penalties for violation of commissioner's orders, 40-4217
 - policy or certificate to be delivered to debtor, 40-4208
 - premium rates, filing and compliance, 40-4211
 - limit on amount charged, 40-4211
 - purpose of chapter, 40-4201
 - refund of excess and unused premiums, 40-4211
 - scope of chapter, 40-4203
 - selection of policy or insurer left to debtor, 40-4214
 - term of coverage, 40-4207
 - time of delivery of policy or certificate to debtor, 40-4209
- Criminal mischief with purpose to defraud insurer, punishment, 94-6-102
- Death of insured, passage of property insurance to successor in interest, 40-3707
- Deceptive practices prohibited, 40-3502
- Definition of terms, 40-2602 to 40-2608
 - types of coverage not mutually exclusive, 40-2901
 - types of insurance, 40-2901 to 40-2908
- Department of insurance
 - appeals from commissioner, 40-2725
 - appropriation of funds by legislative assembly, 40-2702
 - certificates and certified copies as evidence, 40-2708
 - commissioner
 - attorney-in-fact for service of process on nonresident agent, 40-3337
 - control and supervision of department, 40-2702
 - definition of "commissioner," 40-2605
 - delegation of authority, 40-2706
 - power to impose fine, 40-2709
 - responsibility for acts of assistants and employees, 40-2706
 - seal of office, description and use, 40-2703
 - state auditor ex-officio commissioner, 40-2701
 - compensation of employees limited to that provided by law, 40-2705
 - contractual services, procurement by commissioner, 40-2704
 - creation of department, 40-2702
 - definition of "commissioner" and "department," 40-2605
 - employment and compensation of deputies and assistants, 40-2704
 - evidence produced before commissioner or examiner, 40-2718
 - examinations by commissioner
 - adjusters, 40-2714
 - agents and solicitors, 40-2714
 - conduct of examinations, 40-2715
 - expenses of examination, 40-2717
 - insurers, 40-2713

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Department of insurance (Continued)

examinations by commissioner (Continued)

- managers and promoters, 40-2714
- reports on examinations, 40-2716

- fees collectible for certificates, licenses and copies of documents, 40-2726

- financial interest in insurers prohibited to employees of department, 40-2705

- fire prevention advisory commission, appointment, 82-1201

hearings by commissioner

- authority for hearings, 40-2720

- demand for hearing, 40-2720

- notice of hearing, 40-2722

- orders on hearing, 40-2724

- procedure on hearings, 40-2723

- stay of action pending hearing, 40-2721

- notices by commissioner, contents and service, 40-2711

- orders of commissioner, contents and service, 40-2711

- powers and duties in general, 40-2709

- records of proceedings, 40-2707

- rules and regulations, adoption, 40-2710

- service of process through commissioner, 40-2818, 40-2819

- witnesses before commissioner or examiner, 40-2718, 40-2719

Deposits through commissioner

- amounts required, 40-2809

- appraisal of assets deposited, 40-3208

- assignment of securities to commissioner and successors, reassignment, 40-3207

- bank or trust company as custodian, 40-3204

- custodial arrangements, 40-3204

- deficiency in deposits, 40-3212

- deposits subject to chapter, 40-3201

- excess deposits authorized, 40-3210

- income to be paid to depositor, 40-3209

- inspection rights of depositor, 40-3209

- levy on deposits, 40-3211

- liability as to safekeeping of deposits with custodian, state and commissioner exempt, 40-3206

- life insurance policy reserves, 40-3012

- purpose of deposits, 40-3202

- records as to assets and securities deposited, 40-3205

- release of deposit, 40-3213

- safe deposit boxes used for safekeeping of deposits, specifications, 40-3204

- securities eligible for deposit, 40-3203

- substitution of other eligible assets, 40-3209

- time for which deposits held, 40-3213

Desist orders for prohibited practices, 40-3514

Disability insurance

- age of applicant, acceptance of premiums after maximum is reached, 40-4032

- apportionment of loss with other insurers, 40-4021

- expense incurred benefits, 40-4020

- autopsy, right of insurer to require, 40-4013

blanket disability insurance

- applications and certificates not required, 40-4106

- definition of term, 40-4104

- persons to whom payable, 40-4107

- required provisions of policy, 40-4105

- bylaws of insurer, incorporation by reference in policy prohibited, 40-4002

- change of beneficiary, rights reserved to insured, 40-4015

- change of occupation, adjustment of premiums and benefits, 40-4017

- charter of insurer, incorporation by reference in policy prohibited, 40-4002

claims for losses

- forms for filing of claims, 40-4009

- notice of claim, provision for, 40-4008

- persons to whom payable, 40-4012

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Disability insurance (Continued)

claims for losses (Continued)

proofs of loss, 40-4010

time allowed for payment before bringing action, 40-4014

time of payment provision, 40-4011

conformity with state statutes provision, 40-4024

consideration to be expressed in policy, 40-4002

credit disability insurance—See Credit life and disability insurance, above

deduction of unpaid premiums from payment of claim, 40-4023

definition, 40-2903

earnings, relation to insurance, 40-4022

effective date of policy to be expressed, 40-4002

entire contract to be incorporated in policy, 40-4004

exceptions to be stated in policy, 40-4002

excess insurance with same insurer void, provisions for, 40-4019

excess risk, placement by agent with insurer other than that as to which licensed, 40-3326

foreign jurisdiction, conformity to requirements, 40-4030

format of policy, 40-4002

franchise insurance plan, 40-4033

grace period for payment of premiums, 40-4006

group disability insurance, eligible groups, 40-4101

direct payment for medical services, 40-4103

newborn infants to be covered in family policy, 40-4101, 40-4102

required provisions of policies, 40-4102

handicapped children, continued coverage during adulthood

group contracts, 40-3739, 40-3740

individual contracts, 40-3738, 40-3740

illegal occupation exclusion, 40-4025

inapplicable provisions, omission from policy, 40-4003

incidental to life insurance, not covered by chapter, 40-4001

incontestability provisions, 40-4005

intoxication exclusion, 40-4026

minors, power to contract for insurance, 40-3710

misstatement of age, adjustment of benefits, 40-4018

narcotics exclusion, 40-4026

newborn infants to be covered in family policy, 40-4002.1

deductible or reduction in benefits to be consistent with provisions applicable to other covered persons, 40-4002.1

issuance of policy with exclusionary provision prohibited, 40-4002

waiting or elimination periods prohibited, 40-4002.1

nonconforming policies, construction, 40-4031

number of persons to be insured by one policy, 40-4002

older persons, extended insurance for, 40-5401 to 40-5408—See Health insurance for persons over 65, below

optional policy provisions, form required, 40-4016

order of required and optional provisions in policy, 40-4028

physical examination, right of insurer to require, 40-4013

physicians, freedom of choice, 40-4108

scope of practice not enlarged, 40-4109

reduction in indemnity to be stated in policy, 40-4002

reinstatement of lapsed policy, 40-4007

rejected risk, placement by agent with insurer other than that as to which licensed, 40-3326

renewal of policy, provision for insurer's right to refuse, 40-4006, 40-4027

required provisions, insertion in policy, 40-4003

reserve for unearned premiums, 40-3007

rules of insurer, incorporation by reference in policy prohibited, 40-4002

scope of chapter, 40-4001

state institution services deemed covered by policy, 40-4037

issuance of policy with exclusionary provision prohibited, 40-4035

"issued in Montana" defined, 40-4036

rate of payment for state institution services, 40-4038

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

- Disability insurance (Continued)
 - substitutions for optional policy provisions, 40-4016
 - substitutions for required policy provisions, 40-4003
 - termination date of policy to be expressed, 40-4002
 - third party ownership permitted, 40-4029
 - violations of chapter, penalty, 40-4034
- Discharge of insurer by payment, 40-3730
 - minor may give acquittance, 40-3731
- Discriminatory practices prohibited
 - life and disability insurance, 40-3509
 - exceptions, 40-3511
 - property, casualty and surety insurance, 40-3512
- Endowment contracts—See Annuity contracts, above
- Exemption of proceeds from process
 - annuity contract proceeds, 40-3737
 - disability insurance proceeds, 40-3736
 - life insurance proceeds, 40-3734
 - group life insurance, 40-3735
- False information as to terms of policy or condition of insurer, 40-3503 to 40-3505
- False statements in applications and claims, penalty, 40-3522
- Farm mutual insurers
 - accumulation of profits prohibited, 40-4839
 - agents, license not required, 40-4831
 - annual statement of affairs
 - contents and filing, 40-4832
 - exclusive report required, 40-4833
 - failure to file statement, 40-4833
 - presentation at annual meeting of members, 40-4822
 - applications for insurance to be in writing, 40-4843
 - forms filed with commissioner, 40-4844
 - articles of incorporation, contents and filing, 40-4808
 - amendment of articles, 40-4810
 - approval and endorsement, 40-4809
 - certified copies as evidence, 40-4811
 - assessment plan insurance, 40-4806
 - assessments against members
 - suit for collection, 40-4850
 - time payable, 40-4849
 - bylaws
 - adoption, amendment and revocation, 40-4817
 - binding effect on members, 40-4819
 - contents, 40-4818
 - cancellation of insurance, 40-4826
 - cash premium plan, collection of premiums, 40-4806
 - certificate of authority required, issuance and renewal, 40-4816
 - churches, insurance on, 40-4846
 - claims for losses
 - action against insurer for collection, 40-4852
 - apportionment of payments when funds insufficient, 40-4851
 - arbitration by committee of reference, 40-4848
 - directors' and officers' liability for failure to pay, 40-4850
 - notice of loss, 40-4847
 - time of payment, 40-4849
 - commencement of corporate existence, 40-4809
 - community houses, insurance on, 40-4846
 - corporate powers in general, 40-4812
 - "county" insurer defined, 40-4802
 - declaration of intent to incorporate, filing, 40-4808
 - directors
 - election, qualification and term of office, 40-4828
 - general management of affairs of insurer, 40-4827
 - quorum, 40-4827

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Farm mutual insurers (Continued)

- discriminatory rates prohibited, 40-4845
- dividends, payments prohibited, 40-4839
- educational purposes, expenditures of funds for, 40-4836
- exemption from general provisions of code, 40-2610
- fees payable, 40-4842
- forms filed with commissioner, 40-4844
- incorporators, number and property ownership required, 40-4807
- investigation of affairs by commissioner, expenses, 40-4834
- investment of funds authorized, 40-4835
- laws applicable, 40-4801, 40-4853
- maximum amount of insurance on single risk, 40-4804
- meetings of members
 - annual statements, presentation at meeting, 40-4822
 - notice of adjourned annual meetings, 40-4823
 - place of meetings, 40-4821
- membership
 - insurance of property required for membership, 40-4820
 - liability of members, limitations, 40-4825
 - minimum number of members required, 40-4820
 - proxies, 40-4824
 - voting rights of members, 40-4824
 - withdrawal of member, 40-4826
- minimum amount of insurance applied for before commencement of business, 40-4813
- officers
 - bonds of treasurer and secretary, 40-4830
 - election and terms of office, 40-4829
- property insurable by farm mutual, 40-4803
- public buildings, insurance on, 40-4846
- rates, filing with commissioner not required, 40-4845
- records, maintenance and availability, 40-4841
- reinsurance, 40-4805
- reserves required on cash premium plan, 40-4838
- safety fund, creation and use, 40-4837
- school buildings, insurance on, 40-4846
- scope of chapter, 40-4801
- "state" insurer defined, 40-4802
- surplus funds required, 40-4815
 - deficiency, correction required, 40-4840
 - definition of "surplus," 40-4814
- taxes payable, 40-4842

Fictitious groupings for preferred premiums prohibited, 40-3520

Fine, imposition by commissioner, 40-2709

Fire insurance on home, notice required before cancellation or nonrenewal, penalty for violation, 40-4415, 40-4416

Fire prevention advisory commission, appointment by commissioner, 82-1201

Fraternal benefit societies

agents

- applications for agent's license, 40-5346
- compensation not allowed to agents of exempt society, 40-5305
- definition of "insurance agent," 40-5344
- expiration of licenses, 40-5347
- license required, 40-5345
- part-time agents exempt from license requirements, 40-5344
- qualifications for agent's license, 40-5346
- refusal to issue or renew license, grounds, 40-5346
- renewal of licenses, 40-5347
- revocation of license, 40-5349
- salaried persons exempt from licensed requirements, 40-5344
- suspension of license, 40-5349
- termination of appointment, notice to commissioner, 40-5348

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Fraternal benefit societies (Continued)

- alien societies, admission to transact business in state, 40-5307
 - suspension, revocation or refusal of license, grounds and procedure, 40-5308
- annual statement of affairs, form, filing and publication, 40-5337
 - penalty for failure to comply, 40-5339
- articles of incorporation
 - amendments, procedure and filing, 40-5317
 - changes, binding effect on members, 40-5329
 - contents, 40-5309
 - failure to complete organization, articles void, 40-5311
 - filing with commissioner, 40-5310
- attachment of benefits prohibited, 40-5327
- beneficiaries of certificate, designation and change, 40-5326
- bond for return of advance payments if organization not completed, 40-5310
- cash surrender values, computation, 40-5325
- certificate of authority, issuance and effect, 40-5313
- certificate of benefits required, 40-5329
 - changes to articles, constitution or laws, binding effect on members, 40-5329
 - form to be filed with commissioner, 40-5330
 - prohibited provisions, 40-5331
 - standard provisions required, 40-5330
- commissions to be paid only to agents or exempt persons, 40-5345
- consolidation of societies, 40-5353
 - effect of consolidation, 40-5354
- constitution and laws
 - amendments, procedure and filing, 40-5317
 - changes, binding effect on members, 40-5329
 - power to adopt and amend, 40-5314
 - waiver, authority to prohibit, 40-5318
- definition, 40-5301
- disability insurance, filing and approval of certificates, 40-5333
- discrimination in rates or benefits prohibited, 40-5351
- examinations by commissioner
 - domestic societies, 40-5340
 - foreign and alien societies, 40-5341
 - publication of reports deferred until after notice to society, 40-5342
- exemption from general provisions of code, 40-2610
- exemption from process of benefits, 40-5327
- exempt societies, 40-5305
- false and misleading statements, penalties and forfeitures, 40-5350
- family coverage authorized, 40-5323
- foreign society, admission to transact business in state, 40-5307
 - suspension, revocation or refusal of license, grounds and procedure, 40-5308
- forfeiture for failure to pay loan, restrictions on provisions, 40-5331
- funds, purposes for which used, 40-5335
 - authorized investments, 40-5336
- funeral benefits, maximum amount, 40-5326
- funeral homes, operation by societies prohibited, 40-5320
- garnishment of benefits prohibited, 40-5327
- impairment of reserves, assessments against members, 40-5322
- incorporators, number required and qualifications, 40-5309
- initial solicitations, 40-5312
- injunction from doing business, 40-5356
 - exclusive power of attorney general and commissioner, 40-5357
- institutions, maintenance by societies authorized, 40-5320
- investment of funds, 40-5336
- laws applicable, 40-5304, 40-5359
- license to transact business, annual expiration and renewal, 40-5306
- limitation of actions on certificate, minimum period, 40-5331
- liquidation of society, action for, 40-5356
- loans on certificates, authority and computation of value, 40-5325
- "lodge system" defined, 40-5302

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Fraternal benefit societies (Continued)

- meetings of members, place of holding, 40-5319
- membership, qualification for, 40-5321
- merger of societies, 40-5353
 - effect of merger, 40-5354
- minors, admission to membership, 40-5321
 - insurance authorized without membership, 40-5324
- misrepresentation, penalties and forfeitures, 40-5350
- nonforfeiture benefits, authority and computation, 40-5325
- personal liability for benefits, officers and members exempt, 40-5328
- pre-existing societies
 - incorporation of associations required, 40-5316
 - powers retained by incorporated society, 40-5315
- preliminary certificate of authority
 - issuance of certificate, 40-5310
 - period during which valid, 40-5311
 - solicitation under preliminary certificate, 40-5312
- "premiums" defined, 40-5332
- principal office of society, location, 40-5319
- rebates prohibited, 40-5351
- receivership proceedings, 40-5356
- records of proceedings to be in English language, 40-5319
- reinsurance agreements, 40-5334
- "representative form of government" defined, 40-5303
- reserves required, computation, 40-5338
- retroactive certificates, maximum period, 40-5331
- review of actions of commissioner, 40-5358
- service of process on society through commissioner, 40-5352
- social members without voice in insurance affairs, 40-5321
- tax exemption, 40-5343
- time allowed for completing organization, 40-5311
- types of benefits authorized to be provided by societies, 40-5323
- valuation of certificates, computation and filing, 40-5338
- voluntary discontinuation of business, procedure, 40-5356
- waiver of constitution and laws, provision prohibiting, 40-5318

Gaming policies void, 40-3709

Group insurance certificates, assignment, 40-3729

Group insurance for departments and agencies of state, county, city, and town officers and employees, 11-1024

Guaranteed arrest bond certificates, 95-1121 to 95-1123

Guaranty association created, 40-5706

- assessments against insurers, 40-5708
 - failure to pay assessments, action by commissioner, 40-5710
 - rates and premiums increased to cover assessments, 40-5716
- borrowing power of association, 40-5708
- citation of act, 40-5701
- commissioner's powers and duties in general, 40-5710
- default judgment against insolvent insurer, reopening, 40-5718
- definition of terms, 40-5705
- directors of association, selection and reimbursement, 40-5707
- employment of personnel, 40-5708
- examination of affairs of association, 40-5714
- immunity of association from liability, 40-5717
- interstate association, delegation of powers to, 40-5709
- investigation and adjustment of claims against association, 40-5708
- judicial review of commissioner's actions, 40-5710
- kinds of insurance covered by act, 40-5703
- liberal construction of act, 40-5704
- membership in association, 40-5705, 40-5706
- notice to directors of insolvency of insurer, 40-5710
- notice to insureds of insolvent insurer, 40-5708, 40-5710
- obligation of association on claims against insolvent insurer, 40-5708

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Guaranty association created (Continued)

- plan of operation, contents, approval and compliance, 40-5709
- powers of association in general, 40-5708
- premiums to include allowance for association assessments, 40-5716
- prevention of insolvency, steps taken for, 40-5713
- primary and excess coverage when insurer insolvent, 40-5712
- purpose of act, 40-5702
- refund of surplus to member insurers, 40-5708
- servicing facility, designation and reimbursement, 40-5708
 - revocation of designation, 40-5710
- stay of proceedings against insolvent insurer, 40-5718
- subrogation of association on claims paid, 40-5711
- tax exemption of association, 40-5715

Hail insurance, 82-1501 to 82-1520—See HAIL INSURANCE, STATE

Health insurance for persons over 65

- agents authorized to write insurance, 40-5404
- association to provide insurance
 - corporate powers of association, 40-5405
 - definition, 40-5402
 - examination of books and records of association, 40-5405
 - filing by association with commissioner, 40-5407
 - name of association not to be deceptive, 40-5407
 - policy issued to association, 40-5403
 - reports by association to commissioner, 40-5406
 - service of process on association, 40-5405
- cancellation prohibited except for nonpayment of premiums, 40-5403
- definition of terms, 40-5402
- disapproval of forms by commissioner, 40-5406
- eligibility of all persons over 65 for coverage, 40-5403
- exemption from provisions of other laws, 40-5408
- Federal insurance program, adjustment of benefits and premiums to, 40-5406
- forms of policies, applications and certificates to be approved by commissioner, 40-5406
- joint underwriting and administration permitted, 40-5403
- promotional material not to be deceptive, 40-5407
- purpose of act, 40-5401
- rate regulation by commissioner, 40-5406
- reduction of benefits if other benefits recoverable, 40-5403

Health insurance for state employee groups, 40-3905.1

Health insurance, guaranty and continuity of insurer's obligations, 40-5801 to 40-5819

—See LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

Health service corporations, exemption from insurance code, 40-2611

Holding companies

- annual report of insurer controlled by holding company, 40-5505
- appeals from commissioner to district court, 40-5521
- confidential nature of information received by commissioner, 40-5515
- conflicting laws superseded, 40-5522
- definition of terms, 40-5502, 40-5509
- dividends and distributions, restrictions on, 40-5513
- examination of affairs of insurers and holding companies, 40-5505, 40-5514
- injunction to prevent violations, 40-5517
- judicial review of proceedings, 40-5521
- mandamus issued by district court to commissioner, 40-5521
- penalties for violations, 40-5507, 40-5518
 - false information, penalty for filing, 40-5508
- prosecution of violations, 40-5518
- receivership to protect domestic insurer, 40-5519
- registration required of members of holding company system, 40-5512
- revocation, suspension or nonrenewal of insurer's license, 40-5520
- rules and regulations, 40-5516
- sequestration of voting securities, 40-5517
- short title of 1967 act, 40-5501

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Holding companies (Continued)

- subsidiaries, organization, acquisition and investment in, 40-5510
- surplus, determination of adequacy, 40-5513
- tender offers to acquire control of company, filing with and approval by commissioner required, 40-5511
- transactions between affiliates, standards of fairness and disclosure, 40-5513
- transfers of stock, restrictions on, 40-5503
 - exemptions from prohibitions, 40-5504
 - petition for approval by commissioner, 40-5506
- voting of securities, restrictions on, 40-5517

Home insurance, notice required for cancellation or nonrenewal, penalty for violation, 40-4415, 40-4416

Homeowner insurance, notice required before cancellation or nonrenewal, penalty for violation, 40-4415, 40-4416

Injunction of unfair and deceptive practices, 40-3515

Installment sales act, provisions concerning obtaining of insurance by buyer, 74-607

Insurable interest

- personal insurance, 40-3704
- property insurance, 40-3705
- stipulations for payment of loss without regard to insurable interest void, 40-3709

Insurers

- additional types of insurance, qualification of mutuals to write, 40-4713
- affiliations unreliable, denial of authority to transact insurance, 40-2810
- agreements not to sell property prohibited, 40-4727
- alien insurers
 - definition of term, 40-2606
- trust agreements for deposits of assets
 - amendment of agreement, 40-5207
 - authority of insurer to make agreement, 40-5206
 - Canadian insurers, officers in lieu of manager, 40-5215
 - continuation of existing trust under previous instruments, 40-5203
 - examination of assets by commissioner, 40-5212
 - filing and approval of agreement, 40-5205
 - form and contents of agreement, 40-5205
 - period during which deposit maintained, 40-5204
 - purpose of deposits, 40-5204
 - required deposits, amount, 40-5202
 - scope of chapter, 40-5201
 - separation and record of assets, 40-5210
 - statement of trustee as to character and amounts of asset, 40-5211
 - substitute trustee, 40-5214
 - title to trustee assets, 40-5209
 - withdrawal of assets by insurer, 40-5213
 - withdrawal of commissioner's approval, 40-5208

amount of insurance required for formation of mutual, 40-4708

annual statement filed with commissioner, 40-2820

false statements, penalty, 40-2820

applications for mutual insurance to take effect on issuance of certificate of authority, 40-4710

articles of incorporation

- amendment of articles, 40-4707
- contents required, 40-4705
- filing and approval, 40-4706

assets and liabilities

- allowable assets in determining financial condition, 40-3001
- bonds, valuation, 40-3013
- deduction of assets from liabilities and liabilities from assets, 40-3002
- domestic insurer's assets to be kept in state, 40-4725
- excluded assets in determination of financial condition, 40-3003
- liabilities considered in determining financial condition, 40-3004
- purchase money mortgages, valuation, 40-3016

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Insurers (Continued)

assets and liabilities (Continued)

real estate valuation, 40-3015

reserves for unearned premiums, 40-3005 to 40-3012—See Reserve for unearned premiums, below

securities other than bonds, valuation, 40-3014

tangible personal property, valuation, 40-3015

"authorized" insurers defined, 40-2607

benevolent associations, 40-4901 to 40-4917—See Benevolent associations, above

bonding of officers of mutual insurer, 40-4722

bond or deposit required of mutual insurers, 40-4709

borrowed surplus, 40-4738

bulk reinsurance, 40-4747

mutual insurers, 40-4748

buying and selling of votes by proxy prohibited, 40-4719

bylaws

modification or revocation of bylaws of stock insurer, 40-4716

mutual insurers, adoption, contents and filing, 40-4715

capital funds required, 40-2807

mutual insurers, 40-4708

certificate of authority required, 40-2801

application for certificate, contents and filing, 40-2811

exceptions, 40-2802

existing certificates, expiration and renewal, 40-2612

expiration, renewal and reinstatement of certificate, 40-2813

fees payable to commissioner, 40-2726

issuance and ownership of certificate, 40-2812

refusal of certificate, 40-2812

revocation or suspension of certificate

discretionary grounds, 40-2815

duration of suspension, 40-2817

mandatory grounds, 40-2814

notice of revocation or suspension, 40-2816

reinstatement of suspended certificate, 40-2817

certificate of incorporation, issuance and effect, 40-4706

combinations of insuring powers, 40-2806

consolidation with other corporations, 40-4745

mutual insurers, 40-4746

contingent liability of mutual members, 40-4729

assessment, levy by directors, 40-4730

enforcement of liability, 40-4731

nonassessable policies, issuance, 40-4732

revocation of authority for issuance, 40-4733

conversion of mutual to stock insurer, 40-4744

conversion of stock insurer to mutual, 40-4743

corporation statutes of state, application to insurers, 40-4704

corrupt practices with respect to meetings of stockholders or members, 40-4719

defamatory statements, 40-3507

deficits in capital or assets to be made good, 40-4739

assessment of stockholders or members, 40-4740

directors' liability for losses during deficit, 40-4741

transfer of stock during impairment does not release liability, 40-4742

definition of "insurer," 40-2603

deposits of initial premiums received by mutual insurer, 40-4711

deposits through commissioner—See Deposits through commissioner, above

directors, number, term and election, 40-4720

participation of policyholders in election, 40-4721

dividends, funds from which payable, 40-4735

mutual insurers, 40-4736

penalties for unlawful dividends, 40-4737

"domestic" insurer defined, 40-2606

eligibility for certificate of authority, 40-2804

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Insurers (Continued)

- examinations by commissioner, 40-2713
 - conduct of examination, 40-2715
 - destruction of books to hinder examination, penalty, 40-2716
 - expenses of examination, 40-2717
 - managers and promoters, 40-2714
 - reports on examinations, 40-2716
- exclusive agency contracts subject to commissioner's approval, 40-4724
- existing domestic insurers continue corporate existence, 40-2614
- extinguishment of charters, 40-4750
- failure of mutual to qualify for certificate, return of premiums, 40-4712
- false financial statements, 40-3506
- farm mutual insurers, 40-4801 to 40-4853—See Farm mutual insurers, above
- foreign insurers
 - definition of "foreign" and "alien" insurers, 40-2606
 - investments permitted, 40-3134
 - retaliatory tax provisions, 40-2826
 - "state" defined, 40-2606
- fraternal benefit societies, 40-5301 to 40-5359—See Fraternal benefit societies, above
- funeral directors, prohibited relations with, 40-3521
- governmentally owned insurers prohibited, 40-2804
- home office of domestic insurer, 40-4725
- impaired insurers, guaranty and continuity of obligations, 40-5801 to 40-5819—
See LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
- impairment of capital or assets, deficiency to be made good, 40-4739
 - assessment of stockholders or members, 40-4740
 - directors' liability for losses during deficiency, 40-4741
 - transfer of stock during impairment does not release liability, 40-4742
- incorporators, number required, 40-4705
- insider trading in securities, monthly statement to be filed with commissioner of insurance, 40-4751
 - arbitrage transactions exempt from restrictions, 40-4755
 - brokers, when exempt from restrictions, 40-4754
 - closely-held securities exempt from restrictions, 40-4757
 - delivery of securities sold, when required, 40-4753
 - market specialists, when exempt from restrictions, 40-4754
 - profits from security transactions accruing to company, 40-4752
 - registered securities exempt from restrictions, 40-4757
 - rules and regulations of commissioner, 40-4758
 - securities subject to restrictions, 40-4756
 - short sales by insiders prohibited, 40-4753
- interlocking ownership and management, when permitted, 40-3517
- investment advice exempt from securities act, 15-2004
- investments
 - abstract plant and equipment, acquisition by title insurer, 40-3132
 - amount of investment limited, date of determination of insurer's funds, 40-3102
 - authorization by directors or investment committee required, 40-3104
 - building and loan shares and savings account, 40-3123
 - Canadian governmentally guaranteed loans, 40-3107
 - Canadian government direct obligations, 40-3106
 - certificate of authority not required, 40-2803
 - chattel mortgages, 40-3127
 - collateral loans, 40-3122
 - controlling interest in corporation, acquisition prohibited, 40-3133
 - corporate securities
 - bonds and debentures, 40-3114
 - common stock, 40-3116
 - insurance stock, 40-3117
 - maximum amount invested, 40-3105
 - preferred or guaranteed stock, 40-3115
 - subsidiary stocks, 40-3118
 - date of determination of eligibility, 40-3102

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Insurers (Continued)

investments (Continued)

- director, officer or controlling stockholder of insurer, loans to prohibited, 40-3133
- disposal of unauthorized investments, time allowed
- failure to dispose of property, effect, 40-3131
- personal property and securities, 40-3130
- real estate, 40-3129
- unlawfully acquired property, 40-3131
- diversification of investments required, 40-3105
- equipment trust certificates, 40-3119
 - maximum amount invested, 40-3105
- federal agency obligations, 40-3112
- federal direct obligations, 40-3106
- federally guaranteed loans, 40-3107
- foreign insurers, investments permitted, 40-3134
- foreign investments, 40-3124
- improvement district obligations, 40-3110
 - maximum amount invested, 40-3105
- income-bearing quality required, 40-3103
- international bank obligations, 40-3113
- investment trust securities, 40-3120
 - maximum amount invested, 40-3105
- irrigation district obligations, 40-3111
- market value, purchase price restricted to, 40-3103
- miscellaneous investments not otherwise prohibited, 40-3125
- own capital stock, investment in or loans on prohibited, 40-3133
- policy loans, 40-3121
- previously held investments, eligibility, 40-3102
- real estate, 40-3128
- real estate mortgages, 40-3126
- scope of chapter, 40-3101
- state, county and municipal obligations, 40-3108
 - revenue bonds, 40-3109
- underwriting prohibited, 40-3133
- liquidation of assets and liabilities, certificate of authority not required, 40-2802
- loans to officers, directors and employees prohibited, 40-4723
- management contracts subject to commissioner's approval, 40-4724
- management unreliable, denial of authority to transact insurance, 40-2810
- maximum amount insured on one risk, 40-2909
- meetings of stockholders or members, 40-4717
- membership in mutual insurers, 40-4714
- merger with other corporations, 40-4745
 - mutual insurers, 40-4746
- "mutual" insurer defined, 40-4703
- names of insurers, prevention of confusing similarity, 40-2805
- participating policies, authority for issuance, 40-4734
- pecuniary interest of officers, directors and employees, restrictions, 40-4723
- "person" defined, 40-2604
- political contributions prohibited, penalty, 40-3518
- principal place of business of domestic insurers, 40-4725
- proxies of stockholders, revocability, 40-4718
- reciprocal enforcement against domestic insurers of unauthorized insurer laws of other states, 40-4728
- reciprocal insurance, 40-5001 to 40-5028—See Reciprocal insurers, below
- records of domestic insurer to be kept in state, 40-4725
- rehabilitation and liquidation
 - appeals to supreme court in delinquency proceedings, 40-5102
 - assessments against members or subscribers
 - judgment for assessment, 40-5133
 - levy of assessment, 40-5132
 - notice of assessment, 40-5133

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Insurers (Continued)

- rehabilitation and liquidation (Continued)
 - assessments against members or subscribers (Continued)
 - order for payment of assessments, 40-5133
 - order of assessments, 40-5132
 - petition for assessment, 40-5131
 - presumption that assessment is correct, 40-5133
 - attachment of assets during proceedings prohibited, 40-5120
 - borrowing power of commissioner, 40-5124
 - claims against insurers
 - contents of claim, 40-5118
 - contingent and unliquidated claims, 40-5129
 - employees' claims, priority, 40-5127
 - filing of claim, 40-5118
 - hearing and order on claims filed, 40-5118
 - judgments, restrictions on effect as evidence, 40-5129
 - nonresident claims against domestic insurers, 40-5116
 - offset of debts and credits, 40-5128
 - preferred claims, 40-5119
 - priority of claims, 40-5119
 - report and notice of claims filed, 40-5118
 - resident claims against foreign insurer, 40-5117
 - secured claimant, maximum value allowed, 40-5129
 - time for filing, 40-5130
 - commencement of delinquency proceedings, 40-5103
 - definition of terms, 40-5101
 - deposit of moneys collected by commissioner, 40-5122
 - employees' claims, priority, 40-5127
 - exclusiveness of delinquency proceedings as method, 40-5102
 - execution against assets during proceedings prohibited, 40-5120
 - fees for filing and recording of papers, exemption of commissioner, 40-5123
 - garnishment of assets during proceedings prohibited, 40-5120
 - grounds for conservation of foreign insurer, 40-5107
 - alien insurers, 40-5108
 - grounds for liquidation, 40-5106
 - ancillary liquidation of foreign insurer, 40-5109
 - grounds for rehabilitation of domestic insurers, 40-5105
 - injunctions on application of commissioner, 40-5104
 - jurisdiction of delinquency proceedings, 40-5102
 - liens voidable, 40-5126
 - mutual insurer, distribution of assets on liquidation, 40-4749
 - order of conservation of foreign or alien insurer, 40-5113
 - order of liquidation, 40-5111
 - alien insurer, 40-5112
 - ancillary liquidation of foreign insurer, 40-5113
 - order of rehabilitation or termination of rehabilitation, 40-5110
 - receivership, appointment and proceedings by commissioner, 40-5113
 - alien insurers, 40-5114
 - foreign insurers, 40-5115
 - report of commissioner to court, 40-5131
 - time of determination of rights on liquidation, 40-5125
 - transfers void, 40-5126
 - uniform insurers liquidation act, sections comprising, interpretation and construction, 40-5121
 - venue of delinquency proceedings, 40-5102
- scope of chapter on organization and corporate procedures, 40-4701
- service of process through commissioner, 40-2818
 - proceedings after service, 40-2819
- "stock" insurer defined, 40-4702
- surplus requirements, 40-2808
- time allowed for mutual insurer to qualify, 40-4712

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Insurers (Continued)

unauthorized insurers

- actions by unauthorized insurers prohibited, 40-3402
- aiding unauthorized insurers prohibited, felony, 40-3401
- definition of term, 40-2607
- representation of unauthorized insurer prohibited, felony, 40-3401
- service of process on insurers
 - attorney's fees, when allowed in judgment, 40-3408
 - citation of act, 40-3403
 - commissioner as agent, 40-3404
 - defense of action, 40-3407
 - exemptions from service of process provisions, 40-3406
 - judgment, when allowed, 40-3405
 - motion to quash or set aside service, 40-3407
 - procedure for service, 40-3405
 - uniformity of interpretation, 40-3403

unused corporate charters, extinguishment, 40-4750

vouchers for disbursement of funds, 40-4726

Joint owners, transfer of interest by one does not avoid insurance, 40-3708

Lender favoring agent or insurer, prohibition, 40-3516

Liability insurance

- architects on public projects to carry insurance, 66-114
- horse racing licensees required to carry insurance, 62-510
- malpractice insurance, restrictions on cancellation or increase of premiums, 40-4413, 40-4414
- motor vehicle insurance, restrictions on cancellation or nonrenewal, 40-4405 to 40-4412—See Motor vehicle liability insurance, below
- sheriff provided liability insurance by county, 16-2725
- sovereign immunity defense to be waived, 40-4401, 40-4402

Liability insurance on home, notice required for cancellation or nonrenewal, penalty for violation, 40-4415, 40-4416

Life insurance

agents—See also Agents and solicitors, above

disability insurance, authority of agent to write, 40-3303

practices prohibited to unlicensed persons, 40-3303

beneficiaries of industrial policies, provisions as to change, 40-3815

benefits arising out of debt of another policyholder prohibited, 40-3833

cash surrender values, provisions as to table of values to be included, 40-3810

claims for benefits, payment, 40-3814

credit life insurance—See Credit life and disability insurance, above

deduction of unpaid premiums and loan from policy proceeds, 40-3830

definition, 40-2902

dividends payable to policyholder, provision as to, 40-3808

entire contract to be contained in policy, 40-3806

excess risk, placement by agent with insurer other than that as to which licensed, 40-3326

grace period required, 40-3804

group life insurance

application as part of policy, 40-3913

certificates for individual insured persons, 40-3917

conversion rights

death of insured pending conversion, 40-3920

notice as to conversion rights, 40-3921

termination of eligibility of individual, 40-3918

termination of policy or coverage, 40-3919

credit union groups, requirements, 40-3907

debtor groups, requirements, 40-3906

dependents' coverage, 40-3909

employee groups defined, 40-3902

"employee life insurance" defined, 40-3922

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Life insurance (Continued)

group life insurance (Continued)

- established group required, 40-3901
- grace period for payment of premiums, 40-3911
- incontestability provision required, 40-3912
- labor union groups, requirements, 40-3903
- misstatement of age, provision for adjustment of premiums or benefits, 40-3915
- nonforfeiture provisions required, 40-3910
- payment of benefits, provisions as to, 40-3916
- proof of insurability, provisions as to requiring, 40-3914
- public employee groups, requirements, 40-3905
- required provisions in group contracts, 40-3910
- state employee groups, provision for, 40-3905.1
- trustee groups, requirements, 40-3904
- violations of chapter, penalty, 40-3923
- guaranteed installment payments, table of amounts to be included, 40-3811
- homicide by beneficiary on insured as bar to benefits, 91A-2-803 (3)
- incontestability provision required, 40-3805
 - contest as to validity or restriction or exclusion not precluded, 40-3817
- "industrial life insurance" defined, 40-3802
 - nonforfeiture provisions, 40-3831
- lapse or termination of other policy, benefits arising from prohibited, 40-3833
- life and health insurance guaranty association, 40-5801 to 40-5819—See LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
- loan value of policy, provisions as to, 40-3809
 - table of values to be included, 40-3810
- minors, power to contract for insurance, 40-3710
- misstatement of age, provision as to adjustment of benefits, 40-3807
- nonforfeiture benefits, 40-3831
 - old policies, 40-3832
 - table of values to be included, 40-3810
- participating policies, provision as to dividends payable, 40-3808
- premium payment provision to be included, 40-3813
- prohibited provisions, 40-3826
 - industrial life insurance, 40-3827
- reinstatement provisions to be included, 40-3812
 - contestability and exclusions after reinstatement same as for original policy, 40-3828
- rejected risk, placement by agent with insurer other than that as to which licensed, 40-3326
- reserve for unearned premiums, 40-3008
 - amount of reserve required, 40-3011
 - deposit of reserves, 40-3012
- retention of policy proceeds by insurer under agreement, 40-3829
- scope of chapter, 40-3801
- single premium policies, inapplicable provisions omitted, 40-3803
- standard provisions required, 40-3803
- standard valuation law, 40-3011
- term policies, inapplicable provisions omitted, 40-3803
- title required on policies, 40-3816
- types of insurance forbidden to life insurers, 40-2806
- unclaimed funds when presumed abandoned, 67-2203—See PROPERTY, Unclaimed property
- valuation of policies for determination of reserves, 40-3011

Malpractice insurance, cancellation or increase in premiums

notice required before cancellation or increase, 40-4414

unfounded claim does not furnish basis for cancellation or increase, 40-4413

Marine insurance

definition, 40-2907

reserve for unearned premiums, 40-3006

Maximum amount insured on one risk by one insurer, 40-2909

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

- Medical insurance, continued coverage of handicapped children in adulthood
 - group contracts, 40-3739, 40-3740
 - individual contracts, 40-3738, 40-3740
- Minors, gift of policy to, 67-1801 et seq.
- Minors, power to contract for life and disability insurance, 40-3710
- Misrepresentation of terms of policy or condition of insurer, 40-3503 to 40-3505
- Monopolistic practices prohibited, 40-3508
- Motor vehicle liability insurance, cancellation or nonrenewal
 - grounds for cancellation, 40-4407
 - statement of grounds to be furnished insured on request, 40-4406
 - immunity of insurer for statements giving grounds for cancellation or renewal, 40-4412
 - notice to insured required before cancellation, 40-4405, 40-4408
 - penalty for violation, 40-4411
 - notice to insured required before nonrenewal of policy, 40-4409
 - proof of notice by proof of mailing, 40-4410
- Named insured, restriction of property insurance to interest of, 40-3706
- Partnership, transfer of interest by partner does not avoid insurance, 40-3708
- Payment discharges insurer, 40-3730
 - minor may give acquittance, 40-3731
- Penalty for violations, 40-2617
- Policies
 - additional provisions permitted to be included, 40-3719
 - annuity contracts—See Annuity contracts, above
 - assignment of policies, 40-3729
 - exclusion from chapter on secured transactions, 87A-9-104
 - binders for temporary insurance, 40-3726
 - bylaws of insurer, incorporation by reference prohibited, 40-3720
 - charter of insurer, incorporation by reference prohibited, 40-3720
 - combination policies, issuance by two or more insurers, 40-3722
 - construction of entire policy, 40-3725
 - contents of policy in general, 40-3718
 - countersignature by agent required, 40-2822
 - commission of resident agent on policy originating outside state, 40-2824
 - issuance of policy at home or branch office, 40-2825
 - salaried personnel prohibited from countersigning, 40-2823
 - definition of term, 40-3702
 - delivery of policy, 40-3727
 - disability insurance—See Disability insurance, above
 - duplicate policy issued to holder of security interest, 40-3727
 - entire contract contained in policy, 40-3717
 - execution of policies, 40-3721
 - exemption from securities act, 15-2004, 15-2013
 - existing forms remaining in effect, 40-2613
 - extension by certificate, 40-3728
 - form, approval required, 40-3714
 - grounds for disapproval, 40-3715
 - identifying characters on policy forms, 40-3718
 - life insurance policies, 40-3803 to 40-3833—See Life insurance, above
 - loans on policies authorized, 40-3121
 - named insured, restriction of insurance to interest of, 40-3706
 - noncomplying provisions, construction as if in compliance, 40-3724
 - pledge of policies, 40-3729
 - renewal by certificates, 40-3728
 - scope of chapter, 40-3701
 - security interest in policies excluded from Uniform Commercial Code, 87A-9-104
 - signature of policies, 40-3721
 - standard provisions required, when omissions and substitutions permitted, 40-3716
 - underwriters' policies, joint issuance, 40-3722
 - valued policy law applicable to real estate improvements, 40-4302
- Power of persons to contract for insurance, 40-3710
- Preferred rate plans to be approved by commissioner, 40-3520

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

"Premium" defined, 40-3703

Premiums, collection when not due prohibited, 40-3519

Professional liability insurance, cancellation or increase of premiums

notice required before cancellation or increase, 40-4414

unfounded claim does not furnish basis for cancellation or increase, 40-4413

Property insurance

damage or destruction of property with purpose to defraud insurer as criminal mischief, punishment, 94-6-102

definition, 40-2904

measure of indemnity, 40-4301

personal property, adjustment of loss at stated valuation, variance to be stated

in prominent size type, 40-4303

reserve for unearned premiums, 40-3005

unfair discrimination prohibited, 40-3512

valued policy law applicable to real estate improvements, 40-4302

Public grain warehousemen, insurance coverage required, 3-228.6

Rates and rating organizations

administration and enforcement of chapter, 40-3668

advisory organizations, 40-3652

records and examination, 40-3655

casualty insurance, apportionment of, 40-3645

commissioner's examinations, 40-3655 to 40-3658

concerted action by insurers, 40-3641

admitted insurers with common ownership or management, 40-3642

cosurety bonds, 40-3642

definitions, 40-3635 to 40-3638

dividends and return of savings or unabsorbed premium deposits not regulated by chapter, 40-3666

exchange of information and experience data, 40-3644

existing filings remaining in effect, 40-2613

information affecting rates not to be withheld, 40-3665

joint underwriters and reinsurers, 40-3646

joint underwriting and reinsurance groups, filings by, 40-3653

records and examination, 40-3654, 40-3655

loss and expense experience, recording and reporting of, 40-3669

noncompliance of rates, 40-3660

disciplinary action, 40-3662 to 40-3665

hearings, 40-3661

organizations

license, 40-3647 to 40-3649

membership rules, 40-3650, 40-3651

records and examination, 40-3655

subscribers' use of rates, systems, rules or forms, 40-3643

other laws not violated by conduct authorized by chapter, 40-3667

purpose of chapter, 40-3634

review of rates, 40-3659

scope of chapter, 40-3639

standards for rate-making, 40-3640

supplementation or modification of chapter, 40-3668

Rebates prohibited

life and disability insurance, 40-3510

exceptions, 40-3511

property, casualty and surety insurance, 40-3512

Reciprocal insurers

actions by and against insurers, 40-5005

advance of funds to insurer, limitations on retainment, 40-5015

annual statement of insurer, filing, 40-5014

assessments against subscribers

aggregate liability, maximum in one year, 40-5023

authority for levy, 40-5021

computation of amounts, 40-5021

time limit for levy of assessment, 40-5022

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Reciprocal insurers (Continued)

assets and liabilities considered in determining financial condition, 40-5016

attorney-in-fact

action on attorney's bond, 40-5013

bond of attorney, 40-5012

definition, 40-5006

foreign attorney not doing business by representing authorized insurer, 40-5006

powers of attorney, 40-5010

modifications of power, 40-5011

certificate of authority, issuance, suspension or revocation, 40-5009

conversion into stock or mutual insurer, 40-5027

declaration by attorney-in-fact, content and filing, 40-5008

definition, 40-5001, 40-5002

existing insurers, compliance with chapter required, 40-5003

foreign insurers, application of chapter to, 40-5003

impairment of surplus, deficiency to be made up, 40-5028

insuring powers of reciprocal, 40-5004

life insurance by reciprocal arrangement prohibited, 40-2806

liquidation, distribution of assets to subscribers, 40-5026

merger of insurers, 40-5027

modifications of subscribers' agreement or power of attorney, 40-5011

name of insurer, 40-5005

nonassessable policies, issuance, 40-5024

organization of insurer, 40-5008

reinsurance authorized, 40-5004

savings, distribution to subscribers, 40-5025

subscribers

advisory committee representing subscribers, selection and powers, 40-5018

eligibility to become subscriber, 40-5017

fiduciaries of subscribers not personally liable, 40-5017

judgment against insurer required for direct liability, 40-5020

liability of subscribers, 40-5019

surplus funds required, 40-5007

Reinsurance authorized, 40-2910

certificate of authority not required, 40-2802

original insured has no interest, 40-3723

state hail insurance, 82-1505

Reserve for unearned premiums

casualty insurance, 40-3005

disability insurance, 40-3007

increase of inadequate reserves, 40-3009

liability insurance, 40-3008

life insurance, 40-3011

deposit of reserves, 40-3012

marine insurance, 40-3006

property insurance, 40-3005

surety insurance, 40-3005

title insurance, 40-3010

workmen's compensation insurance, 40-3008

Retaliatory tax provisions, 40-2826

Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A

Saving clause as to rights and liabilities accrued, 40-2615

Securities of insurance companies, insider trading in, 40-4751 to 40-4758—See Insurers, insider trading in securities, above

Solicitation of business defined as transaction of insurance, 40-2608

Sovereign immunity defense waived by insurers, 40-4401, 40-4402

Special provisions in code prevail over general, 40-2616

State buildings, deposit and use of insurance proceeds for damage, 78-1101

State insurance plan for tort claims against governmental entities, 82-4301 to 82-4327—

See STATE OF MONTANA, Tort claims against governmental entities

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

Stock offer as inducement to insurance prohibited, 40-3513

Surety insurance

definition, 40-2906

official bonds, power of insurers to write, 40-4502

powers of surety insurers generally, 40-4501

release of corporate insurers from liability, 40-4503

reserve for unearned premiums, 40-3005

unfair discrimination prohibited, 40-3512

Surplus line insurance

affidavit as to prerequisites, 40-3411

agent, license, fee and bond, 40-3414

authority under license, 40-3415

revocation of license, 40-3422

annual statement of agent, contents and filing, 40-3419

certificate of authority not required, 40-2802

certificate or policy of insurance, issuance and contents, 40-3417

endorsement of contract, 40-3412

exemptions from surplus line law, 40-3426

liability of insurer as to losses and unearned premiums, 40-3418

prerequisites to issuance of surplus line insurance, 40-3410

records maintained by agent, 40-3419

rules and regulations prescribed by commissioner, 40-3425

service of process on insurer, 40-3424

short title of act, 40-3409

solvency of insurer, 40-3416

tax on premiums, 40-3420

penalty for failure to file or pay, 40-3421

validity and enforcement of surplus line insurance, 40-3413

Tax on premiums, 40-2821

fire insurance premiums, 82-1231

proceeds paid to relief associations, 11-1919

report of premiums from various cities, 11-1918

independently procured coverage, 40-3427

police department payments from proceeds of tax, 11-1834 to 11-1837—See
CITIES AND TOWNS, Police department, state payments

retaliatory tax provisions, 40-2826

surplus line premiums, 40-3420

penalty for failure to file or pay, 40-3421

Theft insurance on home, notice required for cancellation or nonrenewal, penalty for
violation, 40-4415, 40-4416

Title insurance

abstract or legal opinion required as basis for insurance, 40-4601

definition, 40-2908

guaranty fund required, 40-4603

investments in abstracting plant and equipment authorized, 40-4603

mutual title insurers prohibited, 40-2806

rates, filing with commissioner, 40-4602

reserve for unearned premium, 40-3010

Title of Code, 40-2601

Trade practices

false financial statements, penalty, 40-3506

purpose of regulation, 40-3501

"Transact" defined, 40-2608

Types of insurance enumerated, 40-2902 to 40-2908

Unfair competition prohibited, 40-3502

Uninsured motorist coverage added to motor vehicle policies, 40-4403

Unit ownership property, obtaining insurance for, 67-2331

Valued policy law applicable to real estate improvements, 40-4302

Vending machines, license required, 40-3322

Vendor of property favoring agent or insurer, prohibition, 40-3516

Vested rights preserved, 40-2615

Wagering policies void, 40-3709

INDEX

References are to Title and Section numbers

INSURANCE (Continued)

- Workmen's compensation insurance
 - reserve for unearned premiums, 40-3008
 - subject to workmen's compensation act, 92-1005
- Workmen's compensation insurance premium rates
 - applicability of act, 40-5602
 - enforcement of filed rates
 - higher rates, application for use of, 40-5614
 - lower rates, 40-5613
 - uniform percentage changes, permission for, 40-5615
 - exclusion of certain reciprocal insurers, 40-5603
 - filings by insurers with commissioner, 40-5607
 - notice of disapproval, 40-5610, 40-5611
 - review of filings, 40-5609
 - standards for approval, 40-5612
 - suspension or modification of requirements, 40-5608
 - public welfare, declaration of policy, 40-5601
 - purpose of act, 40-5601
 - rates, provisions as to making of, 40-5604
 - excessive, inadequate or discriminatory rates prohibited, 40-5605
 - uniformity neither required nor prohibited, 40-5606
 - rating organization, composition of, 40-5617
 - committee on operation of organization, 40-5618
 - membership in required, 40-5616

INTEREST

- Consumer loan act—See CONSUMER LOAN ACT
- General pecuniary devise, when interest payable on, 91A-3-904
- Legal interest rate, 47-124
- Maximum rate by agreement, 47-125
- Usury laws unaffected by Secured Transactions chapter, 87A-9-201

INTERLOCAL CO-OPERATION

- Commission, 11-4403 to 11-4414, 11-4416
 - additional powers and duties, 11-4414
 - appropriation of funds for expense, 11-4415
 - comprehensive program, 11-4409
 - implementation, 11-4410
 - formulation of proposal, 11-4408, 11-4411
 - meetings and vacancies, 11-4406, 11-4407
 - organization, 11-4403 to 11-4405
 - public hearings, 11-4412
 - recommendations, procedure for submitting proposals, 11-4413
 - term, 11-4416
- Constitutional authority, 1972 Const., XI, 7
- Definitions, 11-4402
- Interlocal agreements, terms and conditions, 16-4904
 - appropriation of funds, 16-4904
 - approval by attorney general, 16-4904
 - filing with county clerk and recorder and secretary of state, 16-4904
 - furnishing of services, 16-4904
- Policy and purpose of act, 11-4401
- "Public agency" defined, 16-4903
- Purpose of act, 16-4901
- Short title of act, 16-4902

INTERPLEADER

- Bailee under document of title requiring interpleader of conflicting claims, 87A-7-603
- Form suggested by rules, M. R. Civ. P., Appendix of Forms, Form 14
- Joinder of parties by interpleader, M. R. Civ. P., Rule 22(a)
- Substitution of parties by interpleader, M. R. Civ. P., Rule 22(b)

INTERPRETERS

- Deaf persons, appointment required, payment of fee, 93-514

INDEX

References are to Title and Section numbers

INTERSTATE COMPACTS

Driver license compact, text, 31-163
Juveniles, compact on, text, 10-1001
Library compact, text, 44-601
Mental health compact enacted, text, 80-2412
Motor vehicle equipment safety compact, text, 32-21-166
Placement of children, 10-1401 to 10-1409
Western Interstate Corrections Compact, text, 95-2308

INTERSTATE PLACEMENT OF CHILDREN

See CHILDREN AND MINORS, Interstate compact on placement of children

INTERVENTION

Constitutional questions, M. R. Civ. P., Rule 24(c)
Permissive intervention, M. R. Civ. P., Rule 24(b)
Procedure, M. R. Civ. P., Rule 24(c)
Right to intervene, M. R. Civ. P., Rule 24(a)

INTESTATE SUCCESSION

See DECEDENTS' ESTATES, Intestate succession

INVASION OF PRIVACY

Constitutional prohibition, 1972 Const., II, 10

INVESTIGATORS

See PRIVATE INVESTIGATORS AND PATROL OPERATORS

INVESTMENT COMPANIES

See BANKS AND BANKING, Investment companies

INVESTMENTS

Bonds issued for urban renewal projects, 11-3911
Chain distributor schemes, promotion or selling participation in as criminal offense, punishment, 94-6-308.1—See CHAIN DISTRIBUTOR SCHEMES
Public funds, unified investment program, 1972 Const., VIII, 13; 79-1202
School districts, short-term time deposits in qualified depositories, 16-2618 (8)
Special improvement district interest and sinking fund moneys, 11-2288
Trustee and deposit receipts and releases to be signed by director of department of intergovernmental relations, 16-2621

INVESTMENT SECURITIES

See also SECURITIES REGISTRATION, 15-2001 to 15-2025

Agreements as to applicable state law, restrictions on, 87A-1-105
Altered security enforceable according to original terms, 87A-8-206
Assessments, liability of registered owner for, 87A-8-207
Attachment of securities, method of levy, 87A-8-317, 93-4307
Authenticity of third-party documents presumed, 87A-1-202
Bank deposits and collections, extent to which subject to chapter, 87A-4-102
Blanks in security, authority to fill, 87A-8-206
Brokers
 adverse claims to securities held by broker for customer, 87A-8-313
 definition of "broker," 87A-8-303
 fiduciary obligations, not liable for breach by principal, 87A-8-318
 rights of customer in securities held by broker, 87A-8-313
 warranties given by broker in transfer or registration of security, 87A-8-306
Burden of proof as to signatures and defenses in actions on security, 87A-8-105
Call for redemption or exchange, time lapse after call giving notice of defect or defense, 87A-8-203, 87A-8-305
Calls, liability of registered owner for, 87A-8-207
Citation of Uniform Commercial Code chapter, 87A-8-101
Clearing corporations, pledge or transfer of securities by entries on books, 87A-8-320
Commercial Paper chapter inapplicable to securities, 87A-3-103
Conditional delivery ineffective as defense against purchaser for value, 87A-8-202

INDEX

References are to Title and Section numbers

INVESTMENT SECURITIES (Continued)

- Conflict of laws on validity of security and rights and duties of issuer, 87A-8-106
- Counterfeit securities invalid, 87A-8-202
- Course of dealing between parties, application, 87A-1-205
- Creditors' remedies to reach security, 87A-8-317
- Defective securities, validity in hands of purchaser for value, 87A-8-202
- Definition of terms, 87A-8-102
 - "bona fide purchaser," 87A-8-302
 - "broker," 87A-8-303
 - general definitions in Uniform Commercial Code, 87A-1-201
 - "issuer," 87A-8-201
- Endorsement of security
 - blank endorsement, definition, 87A-8-308
 - delivery required to complete transfer, 87A-8-309
 - delivery to purchaser without endorsement, effect, 87A-8-307
 - fiduciary endorsement, effect of want of authority, 87A-8-308
 - form of endorsement, 87A-8-308
 - guarantee of signature or endorsement, effect, 87A-8-312
 - notice to purchaser of adverse claims, form of endorsement constituting, 87A-8-304
 - bearer endorsement, 87A-8-310
 - partial transfer, endorsement making, 87A-8-308
 - persons with power to endorse, 87A-8-308
 - special endorsement, definition, 87A-8-308
 - unauthorized endorsement, when ineffective against owner, 87A-8-311
- Fiduciary transfers
 - adverse claims, duties of corporation or agent after notice, 15-656
 - agent or bailee not liable for breach by principal, 87A-8-318
 - assignment by fiduciary, corporation or agent not bound to inquire, 15-654
 - authorized transfers, nonliability of corporation and agent, 15-657
 - breach of duty by fiduciary, nonliability of innocent parties, 15-658
 - citation of act, 15-662
 - conflict of laws, 15-659
 - definition of terms, 15-652
 - evidence required for assignment by fiduciary not registered owner, 15-655
 - guarantor of signature, restriction on liability, 15-658
 - registration in name of fiduciary, corporation or agent not bound to inquire, 15-653
 - short title of act, 15-662
 - tax obligation unaffected by act, 15-660
 - territorial application of act, 15-659
 - uniformity of interpretation, 15-661
- Forgery as defense against purchaser for value, 87A-8-202
- Fractional interest in rights or property, creator as "issuer," 87A-8-201
- Good faith required, 87A-1-203
- Guarantor of security, obligation as "issuer," 87A-8-201
- Incomplete security, authority to fill, 87A-8-206
- Incorporation by reference to other documents and laws, 87A-8-202
- Injunction to reach security, 87A-8-317
- Judicial process to reach security, 87A-8-317
- Levy on security, procedure required, 87A-8-317
- Lien of issuer to be noted on security, 87A-8-103
- Negotiable nature of securities, 87A-8-105
- Nondelivery ineffective as defense against purchaser for value, 87A-8-202
- Notice by issuer to registered owner sufficient, 87A-8-207
- Notice to purchaser of adverse claims, conditions constituting, 87A-8-304
 - staleness as notice, 87A-8-305
- Overissue of security, effect on provisions validating or compelling issuance of security, 87A-8-104
- Pleadings as to signatures and defenses in action on security, 87A-8-105
- Pledge of securities by entries on books of clearing corporation, 87A-8-320
- Possessory action against security after wrongful transfer, 87A-8-315
- References to other documents and laws, effect, 87A-8-202
- Registration of security
 - action by adverse claimant to prevent registration, 87A-8-403
 - agent for registration, rights and duties, 87A-8-406

INDEX

References are to Title and Section numbers

INVESTMENT SECURITIES (Continued)

Registration of security (Continued)

- assessments, liability of registered owner for, 87A-8-207
- assurances required by issuer before registering transfer, 87A-8-402
- authenticating trustees, rights and duties, 87A-8-406
- bearer endorsement, right of holder to registration under, 87A-8-310
- calls, liability of registered owner for, 87A-8-207
- delay in registration, liability of issuer for loss resulting from, 87A-8-401
- destroyed security, obligations of parties, 87A-8-405
- duty of issuer to register transfer, 87A-8-401
- exemption of issuer from liability for loss from registration, 87A-8-404
- fiduciary obligations, duty of issuer to inquire into, 87A-8-403
- inquiry into adverse claims, duty of issuer before registration, 87A-8-403
- liability of issuer for loss from registration of transfer, 87A-8-404
- lost securities, obligations of parties, 87A-8-405
- notice to registered owner by issuer sufficient, 87A-8-207
- proof of authority to transfer furnished to purchaser, 87A-8-316
- requirements of issuer for registration of transfer, 87A-8-402
- stolen securities, obligations of parties, 87A-8-405
- transfer agent, rights and duties, 87A-8-406
- transfer books, maintenance creating status of "issuer," 87A-8-201
- unauthorized endorsement, when ineffective against owner, 87A-8-311
- voting rights of registered owner, 87A-8-207
- warranties of person presenting security for registration, 87A-8-306

Reservation of rights by party while performing or accepting performance, 87A-1-207

Sale of securities

- "bona fide purchaser" defined, 87A-8-302
- delivery to purchaser, acts constituting, 87A-8-313
 - exchange or brokers, sale through, 87A-8-314
 - form of security acceptable, 87A-8-107
- delivery without endorsement, effect, 87A-8-307
- notice to purchaser of adverse claims, conditions constituting, 87A-8-304
- staleness as notice, 87A-8-305
- price, recovery by seller when buyer fails to pay, 87A-8-107
- proof of authority to transfer furnished to purchaser, 87A-8-316
- rights acquired by purchaser, 87A-8-301
- warranties of registrar or transfer agent to purchaser, 87A-8-208
- warranties of transferor to purchaser, 87A-8-306

Short title of Uniform Commercial Code chapter, 87A-8-101

Staleness of called or matured security as notice of defect or defense, 87A-8-203

Statute of frauds, 87A-8-319

Street name account, right of owner to securities in, 87A-8-313

Successor issuer, responsibility, 87A-8-201

Time allowed for required actions, 87A-1-204

Transfer of security

- clearing corporation entries as means of transfer, 87A-8-320
- delivery required for transfer, 87A-8-309
- delivery without endorsement, effect, 87A-8-307
- form of security acceptable from person obligated to deliver, 87A-8-107
- guarantee of signature or endorsement, warranties included, 87A-8-312
- notice to purchaser of adverse claims, conditions constituting, 87A-8-304
- staleness as notice, 87A-8-305
- possessory action after wrongful transfer of security, 87A-8-315
- proof of authority to transfer furnished to purchaser, 87A-8-316
- registration of transfer, 87A-8-401 to 87A-8-406—See Registration of security, above
- restrictions on transfer to be noted on security, 87A-8-204
- warranties of registrar or transfer agent to purchaser, 87A-8-208

Unauthorized signature in course of issue, when effective, 87A-8-205

Usage of trade, application, 87A-1-205

Validity of defective security in hands of purchaser for value, 87A-8-202

Voting rights of registered owner, 87A-8-207

Warranties of registrar or transfer agent to purchaser, 87A-8-208

"When issued" contract, cancellation by purchaser on material change in security, 87A-8-202

INDEX

References are to Title and Section numbers

IONIZING RADIATION

See RADIATION CONTROL, 69-5801 to 69-5816

IRRIGATION DISTRICTS

Bond issues

- interest rate, maximum paid, 79-2602
- definition of terms, 79-2601
- lien of bonds, duration following maturity, 89-1706
- refunding bonds, issuance authorized, 89-1712
- sale of bonds, notice to board of investments required, waiver, 79-1102, 79-1103
- signatures on bonds, 89-1705
- warrants for payment of interest, 89-1801

Commissioners

- compensation of officers and employees of board, 89-1206
- organization of appointed commissioners, 89-1206
- place of office of commissioners, 89-1206
- records and reports required, inspection, and examination, 89-2107

Contracts with United States, use of excess moneys in contract fund for other obligations of district, 89-1811

Conveyance of property to department to secure financial aid, power of district, 89-1905

Creation, report of department presented at hearing on petition, contents, 89-1201 (3)

Joint operation

- apportionment of costs and expenses, 89-1216
- authority for, 89-1209
- board of control
 - bond of member, 89-1210
 - employment of manager, 89-1214
 - establishment of office, 89-1213
 - examination by department, 89-1215
 - member at large, 89-1210
 - members, 89-1210
 - per diem and expenses, 89-1212
 - powers and duties, enumeration, 89-1211
 - records required to be kept, 89-1215
 - vacancies occurring in, 89-1210
- custodian of funds for, 89-1217
- election on question, method of holding, 89-1218
- existing contracts for joint operation, 89-1218
- manager
 - bond, 89-1210
 - employment, 89-1214
- office, 89-1213
- payments from funds, 89-1217
- purpose of act, 89-1220
- records and papers of, 89-1213
- withdrawal from contract for joint operation, 89-1219

Reserve fund, authorized investments, 89-1811

Reservoir water turned into stream, appointment of commissioner for equitable distribution of water to one or more districts, 89-1001 (6)

Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A

Special assessments, maximum interest paid, 79-2603

definition of terms, 79-2601

Taxation

- annual levy, 89-1804
- apportionment by board of commissioners, 89-1803
- cancellation of levy to pay indebtedness when bond issued, 89-1804
- divided ownership, apportionment of taxes, 89-1804
- elevation considered in apportioning assessment, 89-1803
- maximum levy per acre, 89-1804
- minimum charge, 89-1803
- transmission of funds from county to county, 89-1814
- uniformity of assessment rate against irrigable lands, 89-1803

INDEX

References are to Title and Section numbers

ITINERANT MERCHANTS

License, 3-3201 to 3-3215—See AGRICULTURE, Itinerant merchants

J

JAILS

- Board of prisoners as county charge, 16-3802
 - claims for expenses submitted to county commissioners, 16-2818
- Common jail for two or more counties authorized, 16-2802.1
 - cost and expense, agreement among participating counties, 16-2802.1
 - keeping of jail by agreement of sheriffs, 16-2803
 - location of jail, 16-2802.1
- Diseased prisoners, removal to hospital, 69-4516
- Medical and hospital expense, how paid, 16-2818
- Prisoners delivered by highway patrol, fee for keeping, 16-2818
- Sanitary inspection, 69-4118
- Venereal disease, examination and treatment of prisoners for, 69-4606
- Work release program for prisoners, 95-2216

JOINT TENANCY

- Direct conveyance of real estate creating joint tenancy, 67-1602.1
- Homicide by joint tenant as bar to survivorship right, 91A-2-803
- Husband and wife, transfer of title upon death of spouse, 91-4321.1
- Termination upon payment of inheritance tax, designation of successors, 91A-3-1205

JUDGES

- See DISTRICT COURTS, Judges; SUPREME COURT, Justices
- Arrest, judges privileged from arrest, 95-616
- Disqualification of judges
 - civil cases, 93-901
 - criminal cases, 95-1709
 - place of trial, when change to be made, 93-2906
- Retirement system
 - actuarial investigations and valuations, 93-1112
 - administrative expenses, appropriation, budgets, 93-1110
 - beneficiary, nomination of, 93-1127
 - call of retired judge for duty, reimbursement, 93-1130
 - contributions to system
 - back payments, payroll deduction, 93-1113
 - members, contributions by, 93-1115
 - payment into retirement fund, 93-1111
 - state contributions, 93-1116
 - death benefits, 93-1123, 93-1124
 - definition of terms, 93-1107
 - disability retirement allowance, 93-1119
 - dormant accounts, transfer to pension accumulation fund, 93-1132
 - errors, correction, 93-1129
 - exemption of benefits from taxation or process, 93-1126
 - false or fraudulent statements, penalty, 93-1129
 - funds
 - payments into judges' retirement fund, investment, 93-1111
 - transfer of dormant accounts to pension accumulation fund, 93-1132
 - involuntary retirement allowance, 93-1120
 - judges' retirement board, existence and composition, 82A-210.2
 - membership in system, 93-1113
 - military service, credit for, 93-1128
 - monthly payment of allowances, 93-1125
 - optional means of payment of benefits, 93-1131
 - penalty retirement allowance, 93-1121
 - refund of contributions on resignation or discharge, 93-1122
 - rules and regulations for administration of system, 93-1112
 - service allowance, computation of, certificate issued, 93-1114
 - service retirement allowance, amount, 93-1118

INDEX

References are to Title and Section numbers

JUDGES (Continued)

- Retirement system (Continued)
 - voluntary retirement, requirements for vesting of proportional retirement allowance, 93-1117
- Salary increase during term permitted, 1972 Const., VII, 7

JUDGMENTS

- Amendment to conform to new findings of fact, M. R. Civ. P., Rule 52(b)
- Amount of judgment, M. R. Civ. P., Rule 54(c)
- Assignment excluded from Uniform Commercial Code, 87A-9-104
- Attorney fees, contractual right to recovery reciprocal, 93-8601.1
- Contents of judgment, M. R. Civ. P., Rule 54(a)
- Costs included in judgment, M. R. Civ. P., Rule 54(d)
- Counterclaim, separate judgment on, M. R. Civ. P., Rule 13(i)
- Criminal procedure, 95-2201 to 95-2312—See CRIMINAL PROCEDURE, Sentence and judgment
- Cross-claim, separate judgment on, M. R. Civ. P., Rule 13(i)
- Declaratory judgment, action for, M. R. Civ. P., Rule 57
- Default judgment
 - amount not to exceed that demanded, M. R. Civ. P., Rule 54(c)
 - entry of judgment, M. R. Civ. P., Rule 55(a)
 - extension of time by court or stipulation, M. R. Civ. P., Rule 55(c)
 - real estate broker residing outside state, entry against, 66-1936
 - setting aside default, M. R. Civ. P., Rule 55(c)
- Definition, M. R. Civ. P., Rule 54(a)
- Enforcement proceedings governed by statutes, M. R. Civ. P., Rule 69
- Entry of judgment on verdict, M. R. Civ. P., Rule 58
 - notice of entry served on adverse party, M. R. Civ. P., Rule 77(d)
- Findings of fact by court, separate statement, M. R. Civ. P., Rule 52(a)
- Harmless error, effect on judgment, M. R. Civ. P., Rule 61
- Married persons, judgment for or against, 93-4707
- Mistaken judgment, grounds and procedure for relief from, M. R. Civ. P., Rule 60
- Multiple claims or parties, judgment as to portion, M. R. Civ. P., Rules 4 D(10), 54(b)
- Offer of judgment before trial, M. R. Civ. P., Rule 68
- Part of defendants served, application of judgment to defendant later served, M. R. Civ. P., Rule 4 D(10)
- Pleading of judgments, manner, M. R. Civ. P., Rule 9(e)
- Pleadings, motion for judgment on, M. R. Civ. P., Rule 12(c)
- Sales after judgment validated despite defects, 93-5846
- Specific acts required by judgment, M. R. Civ. P., Rule 70
- Stay of proceedings to enforce judgment, M. R. Civ. P., Rule 62
- Summary judgments, motion for, M. R. Civ. P., Rule 56
- Third-party practice, separation of judgment, M. R. Civ. P., Rule 14(a)
- Tort action against state, judgment in, 83-705
- Validation of recorded judgment or decree affecting realty, 93-5710.1 et seq.
- Vesting of title by judgment, M. R. Civ. P., Rule 70
- Voluntary partial payment of damage claim as credit to subsequently entered judgment, 93-2201-9

JUDICIAL DISTRICTS

- Youth guidance homes, 10-1101 to 10-1111—See YOUTH GUIDANCE CENTERS, District youth guidance home

JUDICIAL NOMINATION COMMISSION

- Appointment by governor to fill judicial vacancy from list submitted, 93-711
 - governor's failure to make appointment, chief justice to appoint, 93-712
- Appointment of commission members, 93-705
- Composition of commission, 93-705
- Creation, 93-705
- Functions of commission, 93-705
- Quorum, 93-708
- Secretary, election, duties, 93-707
- Senate confirmation of appointment required, 93-713

INDEX

References are to Title and Section numbers

JUDICIAL NOMINATION COMMISSION (Continued)

- Submission of list to governor to fill vacancy on supreme court or district court, 93-710
 - application for candidacy, qualifications, 93-709
 - investigation of candidates, 93-709
- Term of judicial appointment, 93-714
- Terms of commission members, filling of vacancies, 93-706

JUDICIAL STANDARDS COMMISSION

- Creation, composition, appointment of members, 93-718, 93-719
- Determination and order by supreme court, 93-724
- Disqualification of judge pending criminal prosecution or proceeding before commission, 93-726
- Investigation of judicial officers, 93-722, 93-723
 - alternative procedures available to commission, 93-722
 - confidentiality of papers and proceedings, 93-723
 - initiation of proceedings, 93-722
 - recommendations to supreme court for censure, suspension, removal or retirement of judicial officer, 93-722
- Judicial officer not to participate in investigation of self or relative, 93-725
- Order of retirement, rights of judicial officer, 93-728
- Removal of judicial officer from office, cessation of salary, suspension from law practice, ineligibility for judicial office, 93-728
 - criminal conviction becoming final as cause for removal, 93-727
- Reversal of criminal conviction, restoration of salary of officer, 93-727
- Service by members without compensation, expenses, 93-721
- Suspension of judicial officer without salary upon conviction of moral turpitude crime, 93-727
- Termination of membership, filling of vacancy, 93-720
- Terms of members, 93-719

JUNK MOTOR VEHICLES

- Exemption of junk vehicle carriers, 8-101
- Use along banks of stream for flood control prohibited, penalty, 69-6811, 69-6812

JUNK VEHICLE DISPOSAL

See MOTOR VEHICLES, Wrecking facilities

JUNKYARDS

- Receiving or purchasing goods from child as criminal offense, punishment, 94-5-609 (1)(c)
- Regulation of junk yards along roads, 32-4513 to 32-4523—See HIGHWAYS, BRIDGES AND FERRIES, Junkyards along roads

JURIES AND JURORS

- Additional jurors, drawing of, 93-1512
- Advisory jury trial, M. R. Civ. P., Rule 39(c)
- Alternate jurors, seating, M. R. Civ. P., Rule 47(c)
- Challenges
 - cause, trial of challenges for, M. R. Civ. P., Rule 47(a)
 - six-member jury, peremptory challenges allowed, 93-1205
- Coroner's inquest, number of jurors, jurors to be sworn, 95-803, 95-804
- Court ordering jury trial, M. R. Civ. P., Rule 39(b)
- Criminal cases, 95-1901 et seq.—See CRIMINAL PROCEDURE, Juries and jurors
- Demand for jury trial, M. R. Civ. P., Rule 38(b)
- Examination of prospective jurors, M. R. Civ. P., Rule 47(a),(b)
- Fees payable to jurors, 25-401
- Grand jury, 1972 Const., II, 20; 95-1401 to 95-1410—See GRAND JURY
- Instructions to jury, objections and exceptions, M. R. Civ. P., Rule 51
- Interrogatories to jury, M. R. Civ. P., Rule 49(b)
- Issues, designation for jury trial, M. R. Civ. P., Rule 38(c)
- Jury lists
 - officers required to make, 93-1401
 - time for making, 93-1401

INDEX

References are to Title and Section numbers

JURIES AND JURORS (Continued)

- Mileage allowances to jurors for use of own vehicles, 59-801
- Number of jurors
 - reduced juries, 1972 Const., II, 26; 93-1205, M. R. Civ. P., Rule 48
 - six-member jury in discretion of trial judge, 93-1205
- Right to jury trial in civil cases, 1972 Const., II, 26; M. R. Civ. P., Rule 38(a)
 - declaratory judgment actions, M. R. Civ. P., Rule 57
- Right to jury trial in criminal cases, 1972 Const., II, 24, 26
 - district court, 95-1901
 - justices' and police courts, 95-2004
- Selection and examination of jurors, M. R. Civ. P., Rule 47(b)
- State officers exempt, 93-1304
- Summoning of jurors, 93-1509
- Verdict—See VERDICTS
 - criminal cases, 95-1915—See CRIMINAL PROCEDURE, Verdicts
- Waiver of right to jury trial, M. R. Civ. P., Rule 38(d)

JURISDICTION

- Carrying concealed weapon, original jurisdiction of district court, 94-8-217
- Coroner, jurisdiction of, 95-812
- Courts, jurisdiction of persons, M. R. Civ. P., Rule 4 B
- Criminal cases, jurisdiction of courts and state criminal jurisdiction, 95-301 to 95-304
- Criminal offenses
 - determination of jurisdiction as one basis for classification of offenses, 94-1-105
- Small claims courts, 93-329—See SMALL CLAIMS COURTS

JUSTICES' AND POLICE COURTS (CIVIL MATTERS)

- Pleadings—See PLEADINGS (CIVIL) in Parent Volume

JUSTICES OF THE PEACE

- Absence from state forfeits judicial position, 1972 Const., VII, 10
- Counties without qualified constable, appointment by county commissioners for service of process, 93-7709
- Course of study following election, per diem and expense while attending, 93-401
- Court costs withheld by justices from fines and forfeitures in criminal actions, 25-310
 - remittance to county treasurer, 25-311
- Criminal cases, proceedings, 95-2001 to 95-2009—See CRIMINAL PROCEDURE, Justices' courts
- Criminal jurisdiction, 95-302
- Depositions, 93-7712
- Disqualification of justice, grounds, procedure, 93-901
 - civil cases, 93-901
 - criminal cases, 95-1709
 - transfer of action or calling of another justice, procedure, jurisdiction, 93-7704
- Election in each county, 1972 Const., VII, 5
- Facilities to be provided by county, 93-412
- Fees collected by justices
 - civil actions, 25-301
 - criminal actions, 25-310
 - remittance to county treasurer, 25-311
 - monthly statement to accompany payment, 25-307
- Highway commission arrests, procedure and fees on, 32-1641
- Holding court for another justice within county, jurisdiction, 93-403
 - expense allowance of visiting justice, 93-403
- Jurisdiction, Const., VII, 5; 93-408
 - criminal jurisdiction, 93-410
 - forcible entry and unlawful detainer jurisdiction concurrent with district courts, 93-409
- Number of justice courts per county, 1972 Const., VIII, 5; 93-401
- Oath, requirements for filing, 93-401
- Office hours to be designated by county commissioners, 93-414
- Open continuously for transaction of business, exceptions, 93-402

INDEX

References are to Title and Section numbers

JUSTICES OF THE PEACE (Continued)

Place of holding court, 93-402

Pleadings

demurrers and pleas abolished, 93-6802.2

enumeration of permissible pleadings, 93-6802.1

Political candidacy forfeits judicial position, 1972 Const., VII, 10

Practice of law by justice, restrictions on, 16-3605, 93-902

Qualifications, 1972 Const., VII, 5; 93-401

orientation course, requirements, 93-401 (c)

Removal and discipline, 1972 Const., VII, 11

Salaries, 1972 Const., VII, 5; 25-306, 93-413

Service of process in justice court proceedings, 93-6711

Terms of justices, 1972 Const., VII, 7

justices in office on effective date of new constitution, 1972 Const., Transition Schedule, Sec. 4

Training session held annually for justices, per diem and mileage expense allowed for attendance, 93-401 (6)

Vesting of judicial power in justice courts, 1972 Const., VII, 1

JUVENILE COURT

Youth court, 10-1201 to 10-1252—See **YOUTH COURT**

K

KIDNAPING

Aggravated kidnaping, elements of offense, 94-5-303 (1)

death sentence, 94-5-303 (2), 94-5-304

victim released, punishment, 94-5-303 (2)

Elements of offense, punishment, 94-5-302

Unlawful restraint, elements of offense, punishment, 94-5-301

Venue of prosecution, 95-411

KINDERGARTENS

Establishment and operation by school district authorized, 75-7507

L

LABELS

Honey, 27-703 (r)

Mislabeled commodities, selling or exposing for sale as deceptive business practice, punishment, 94-6-308—See **DECEPTIVE PRACTICES**

LABOR

Apprenticeship council, 41-1201, 41-1202—See **APPRENTICESHIP COUNCIL**

Bartenders, minimum age, 41-1135

violation as misdemeanor, 41-1136

Board of labor appeals created, 82A-1008

functions of board, 82A-1009

Board of personnel appeals created, composition, functions, 82A-1014

highway department employee grievances, hearing, 32-2505

Commissioner of labor and industry, term of office, salary, and oath, 41-1603

continuation as head of reorganized department, 82A-1001

examination of witnesses, subpoena power, 41-1605 (2)

inspection of industrial and mining establishments, 41-1605 (2)

County road and bridge departments, four-day work week authorized, 41-1121

Department of labor and industry, appointment of commissioner, 1972 Const., XII, 2;

82A-1001 to 82A-1010—See **REORGANIZATION OF STATE GOVERNMENT**,

Department of labor and industry

Discriminatory practices by labor organization unlawful, 64-304 to 64-312—See **CIVIL RIGHTS**, Discriminatory practices

Employment agencies, 41-1417 to 41-1438—See **EMPLOYMENT AGENCIES**

INDEX

References are to Title and Section numbers

LABOR (Continued)

- False advertising to induce change in place of employment unlawful, damages recoverable, 41-118
- Highway department employee grievances, hearing by board of personnel appeals, 32-2505
- Hours of labor
 - maximum hours in regular day's work, 1972 Const., XII, 2
 - overtime payment required, 41-2303
- Injury in employment, right to legal redress for, 1972 Const., II, 16
- Labor activity interfering with one- or two-man retail or amusement establishment beer and liquor establishments excepted from act, 41-1804
 - "immediate family" defined, 41-1803
 - intent of act, 41-1801
 - unfair labor practice, 41-1802
 - violation of act, penalty, 41-1805
- Lie detector test as condition to employment prohibited, violation as misdemeanor, 41-119
 - law enforcement agencies, provisions not applicable to, 41-120
- Mandatory leave of absence for employees holding public office, return requirements, 59-1011
 - unemployment benefit cost not charged to employer, 59-1012
- Maternity leave from employment, 41-2601 to 41-2606—See WOMEN, Maternity leave from employment
- Obtaining temporary use of labor or services illegally as theft, 94-6-304—See THEFT
- Physically handicapped persons, employment discrimination unlawful, limitations, 64-304
- Professional strikebreakers, employment in labor dispute prohibited, 41-2502 (1)
 - advertising for strikebreakers prohibited without disclosure of labor dispute, 41-2504
 - contract for procurement of strikebreakers prohibited, 41-2503
 - penalties for violations, 41-2505
 - recruitment of strikebreakers by person or organization not party to labor dispute prohibited, 41-2501
 - strikebreaker taking or offering to take place in employment prohibited, 41-2502 (2)
- Public employees, collective bargaining authorized, 59-1601 to 59-1616—See PUBLIC OFFICERS AND EMPLOYEES, Collective bargaining
- Pursuit of life's basic necessities, right to, 1972 Const., II, 3
- Restaurant, bar and tavern wage protection, 41-2001 to 41-2010—See WAGES, Restaurant, Bar and Tavern Wage Protection Act
- Safety codes
 - citation of act, 41-1708
 - definitions, 41-1709
 - division of workers' compensation
 - closing unsafe place of employment, 41-1720
 - code-making power, 41-1727
 - compelling witnesses' appearance, proceeding to, 41-1714
 - compliance with order, allowance of reasonable time for, 41-1719
 - general research powers, 41-1729
 - hazardous places of employment, periodic inspections of, 41-1725
 - judicial review, 41-1721
 - notice of hearing on rules and codes, 41-1716
 - powers, 41-1713
 - power to prescribe safety devices and standards, 41-1715
 - prohibiting use of unsafe apparatus, 41-1718
 - rehearing before division, 41-1722 to 41-1724
 - safety orders, 41-1717
 - variations, grant of, 41-1728
 - workmen's complaints of safety violations, 41-1726
 - duties of employer, 41-1710, 41-1711
 - occupational health hazards, 41-1733
 - public contractors subject to act, 41-1731
 - safety devices, removal or refusal to use prohibited, 41-1712

INDEX

References are to Title and Section numbers

LABOR (Continued)

Safety codes (Continued)

- structures and equipment in existence, effect on, 41-1732
- violation a misdemeanor, 41-1730

Safety study commission

- abolition of commission, 82A-1010
- appointment of members, 41-2102
- composition of commission, 41-2103
- employment of secretary and research services, 41-2106
- proposed changes in labor safety laws
 - adoption by legislature required, 41-2105
 - distribution to industry and legislature, 41-2104
- purpose of act, 41-2101
- records, commission required to keep, 41-2108
- reimbursement of commission members, 41-2107
- rules of procedure, adoption by commission, 41-2108
- scope of work, 41-2102

Seats for all employees to be provided in certain business establishments, use of seats, 41-1119

State board of arbitration and conciliation abolished, 82A-1010

Vocational rehabilitation

- definition of terms, 71-2101
- disabled individuals requiring financial assistance, rehabilitation services to be provided, 71-2105
- eligibility for rehabilitation, 71-2105
- funds for rehabilitation, state treasurer to receive and disburse, 71-2104
- handicapped persons, 41-816 to 41-819
 - definitions, 41-817
 - eligibility for rehabilitation service, determination by department, 41-818
 - federal funds, appropriation to use of department, 41-819
 - legislative purpose and findings, 41-816
 - purchase of sheltered employment services for severely handicapped persons authorized, 41-818 (1)
 - register of nonprofit organizations meeting required standards to be maintained by department, 41-818 (2)
 - rules and regulations of department, 41-818
 - "severely handicapped person" defined, 41-817 (1)
- hearing of aggrieved persons, 71-2106
- political activity of administrative officer or employee, limitation, 71-2107
- penalty for violation, 71-2107
- severability of provisions, 71-2108
- state department duties and powers, 71-2102
 - co-operation by state department with federal government required, 71-2103
 - "state department" defined, 71-2001.1
- workmen's compensation coverage of persons in vocational rehabilitation, 92-411
- workmen's compensation recipients, 92-1401 to 92-1404, 92-1406—See WORK-ERS' COMPENSATION, Rehabilitation of injured workmen

Wages—See WAGES

Winter work programs, 41-1901 to 41-1907—See WINTER WORK PROGRAMS

Women, employment of, 41-2401 to 41-2403

- department of labor and industry, duties, 41-2402
- legislative policy, 41-2401
- rules, adoption authorized, 41-2403

LABORATORIES

Malpractice, statute of limitations, 93-2624

LABORATORY COMMISSION

Commission abolished, 82-3322

LACHES

Affirmative defense, M. R. Civ. P., Rule 8(c)

INDEX

References are to Title and Section numbers

LAKES

- Protection of lake areas, 89-3701 to 89-3712
 - co-operation between governing bodies, 89-3709
 - definition of terms, 89-3702
 - funding of program, 89-3712
 - judicial enforcement and review, 89-3710
 - "lake" defined, 89-3702 (1)
 - permit from local governing body required for work altering course, current, or cross-sectional area of lake or lakeshore, 89-3703
 - application for permit, fee, 89-3705
 - examples of work requiring permit, 89-3703
 - issuance or denial of permit, time limitation, 89-3706
 - "lakeshore" defined, 89-3702 (2)
 - "local governing body" defined, 89-3702 (4)
 - minimum requirements for issuance of permit, 89-3704 (2), (5)
 - planning board recommendations to governing body, 89-3705
 - regulations establishing criteria for issuance of permits to be adopted, 89-3704
 - regulations for particular lake, adoption by department on petition of owners, 89-3704 (6)
 - two or more lakes within jurisdictional area, separate regulations authorized, 89-3704 (4)
 - variance from regulations, environmental impact statement required, 89-3707
 - work performed without permit, restoration may be required, 89-3708 (1)
- policy, legislative declaration of, 89-3701
- vested property right not created in work or development, 89-3708 (2)
- violation as misdemeanor, penalty, disposition of fines, 89-3711
- Title to bed, proceedings to determine, 81-2305

LAND DEVELOPMENT

See ECONOMIC LAND DEVELOPMENT ACT

LANDLORD AND TENANT

Principal and income act, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

- Security deposits of residential tenants, 42-301 to 42-309
 - deductions from security deposit by landlord, authorized items, 42-303
 - definition of terms, 42-301
 - dwellings and mobile homes, law applicable to, 42-302
 - lists of damages to leased premises provided by landlord to departing tenant, time limitation, 42-304
 - delivery of lists to be accompanied by payment of difference between deposit and permitted charges, 42-304
 - failure to provide list as forfeiture of right to withhold any portion of security deposit, 42-305
 - provisions of leasehold agreement contrary to act invalid, 42-309
 - public housing authority property excluded from provisions, 42-302
 - "security deposit" defined, 42-301 (3)
 - statement of present condition and damage attributable to previous tenant to be provided at beginning of tenancy, 42-308
 - failure to furnish as bar to recovery of damage to premises, 42-308
 - waiver of provisions by tenant invalid, 42-309
 - wrongful withholding of deposit by landlord, action by tenant authorized, 42-306
 - burden of proof on landlord, 42-306
 - double the amount wrongfully withheld and attorney's fees recoverable in discretion of court, 42-306
 - tenant failing to furnish new address, landlord relieved of double liability, 42-307
 - time for filing action, 42-306

LANDSCAPE ARCHITECTS

- Board created, appointment, qualifications and terms of members, rules authorized, 82A-1602.30
- County or city business license not issued without current registration with board, 66-3809 (3)

INDEX

References are to Title and Section numbers

LANDSCAPE ARCHITECTS (Continued)

- Criminal offenders, licensure of, 66-4001 to 66-4005—See **LICENSURE OF CRIMINAL OFFENDERS**
- Definition of terms, 66-3803
- Earmarked revenue fund, deposit of fees in, 66-3807 (3)
- "Landscape architect" defined, 66-3803
- "Landscape architect" or "landscape architecture," use of terms prohibited without license, 66-3810 (1)
- License and registration required for practice, 66-3804, 66-3810
 - examination of applicants required, exceptions, 66-3806
 - exemptions from licensing and registration requirements, 66-3808
 - fees for license and renewal, 66-3807
 - partnerships, each partner to be licensed, name, 66-3809
 - performing services for corporation, firm, partnership or association authorized, 66-3809 (1)
 - qualifications for license, 66-3805
 - reciprocity with other states, 66-2807 (4)
 - revocation or suspension of license, grounds, 66-3811
- Purpose of law, 66-3802
- Seal required of licensees, form and contents, 66-3810 (2)
 - use of seal on all drawings and specifications, 66-3810 (2)
- Short title, 66-3801
- Violations, penalties, prosecution, 66-3812, 66-3813

LAND USE REGULATION

See **ECONOMIC LAND DEVELOPMENT ACT; PLANNING AND ZONING**

LARCENY

See **THEFT**

Coin-operated machines, use of device to open or break machine unlawful, penalty, 94-35-249

Venue of prosecutions, 95-408

LAW ENFORCEMENT ACADEMY

See **COLLEGES AND UNIVERSITIES**, Law enforcement academy, 75-5201 to 75-5208

LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS

- Assessments for operational charges, 82-3903
- Committee, members, terms, vacancies, meetings, compensation, duties, 82-3902
 - abolition of committee and transfer of functions, 82A-1202
- Establishment of system by attorney general, 82-3901
- Federal agencies, co-operation with, 82-3905
- Local law enforcement agencies, participation in system, 82-3904
- Powers of attorney general, 82-3903
- Report of attorney general, 82-3906
- State agencies included, 82-3901

LEASE-PURCHASE CONTRACTS

See **DEPARTMENT OF ADMINISTRATION**, Building programs

LEGISLATIVE AUDIT ACT

- Audit committee created as permanent joint committee of legislative assembly, 79-2303.1
 - compensation and expenses of members, 79-2305
 - composition, appointment of members, qualifications, term, filling of vacancy, 79-2304
 - meetings, 79-2305
 - officers, election, 79-2304
- Employees, appointment by auditor, 79-2308
- Examinations of agencies, aid and assistance to be given auditor, 79-2314
- Legislative auditor
 - appointment, qualifications and salary, 79-2307

INDEX

References are to Title and Section numbers

LEGISLATIVE AUDIT ACT (Continued)

Legislative auditor (Continued)

- assistance given to legislative assembly, 79-2311.1
- audit standards and objectives, 79-2311
- creation of office, 79-2303.1
- director, responsibilities, 79-2303.1 (2)
- duties, 79-2310
- employees, consultants, and legal counsel, appointment by auditor, 79-2308
- removal, notice and hearing, 79-2309
- term of auditor, 79-2309

Notice to auditor of suspected misappropriation of state property, 79-2314

Prosecution of offenses disclosed by audit, 79-2315

- material involving professional person turned over to disciplinary authority, 79-2315

Recommendations of auditor, enforcement powers limited, 79-2312

LEGISLATIVE COUNCIL

Commission on interstate cooperation

- council constitutes, 82-2112
- council of state governments declared joint governmental agency, 82-2113
- delegations and committees, 82-2112
- function, 82-2112

Compensation and expenses of members, legislature not in session, 43-714

Establishment authorized, 1972 Const., V, 10

Functional divisions within council, establishment authorized, divisions included, 43-711

Laws, resolutions and journals of legislative assembly, duties of council in respect to, 43-711.1 to 43-711.5

- distribution of bound copies, 43-711.2

- expenses, how paid, 43-711.5

- legal services division assigning section numbers and catch lines to enacted bills, 43-711

- new county boundaries to be included in session laws, commencement date, 43-711.4

- printing and indexing, 43-711.1

- publication and indexing of laws, form, 43-711.3

LEGISLATIVE PROCEEDINGS—DISSEMINATION

Fee for complete set of legislative proceedings, 43-902

Funds, accounting and use of, 43-902

"One complete set" defined, 43-901

"Person" defined, 43-901

Press, radio and television, excepted from act, 43-903

"Proceedings of the legislature" defined, 43-901

Public officials, exemption from act, 43-904

Single copies of matters, fee, 43-902

Status sheets, single copies, fee, 43-902

LEGISLATURE

Adjournments, limitations upon, 1972 Const., V, 10

Annual meetings required, 1972 Const., V, 6

Apportionment, 1972 Const., V, 14

- reapportionment commission to be selected decennially, 1972 Const., V, 14; 43-108

- appointment of commissioners, 43-109

- commissioners ineligible for legislative office, 43-118

- compensation and expenses of commissioners, 43-111

- dissolution of commission upon adoption of plan, 43-117

- final plan, filing with secretary of state, 43-117

- per diem and expenses of commissioners, 43-111

- public hearing on reapportionment plan, 43-114

- return of plan by legislature with recommendations, 43-116

- state agencies to co-operate, 43-113

- submission of reapportionment plan to legislature, time for, 43-115

- technical and clerical services to be provided, 43-112

- vacancies on commission, how filled, 43-110

INDEX

References are to Title and Section numbers

LEGISLATURE (Continued)

- Appropriation bills, item veto, 1972 Const., VI, 10; 43-502
- Approval of bill by governor, 1972 Const., VI, 10; 43-502
- Arrest, members privileged from arrest, 1972 Const., V, 8; 95-616
- Attendance of absent members, less than majority may compel, 1972 Const., V, 10
- Audit of state agencies, 79-2301 to 79-2315—See LEGISLATIVE AUDIT ACT
- Bills
 - adjournment of session, pending bills carry over, 1972 Const., V, 6
 - alteration or amendment changing original purpose prohibited, 1972 Const., V, 11
 - appropriation bills, 1972 Const., V, 11
 - ayes and noes to be recorded, 1972 Const., V, 11
 - challenge of law for technical errors in passage, time limit, 1972 Const., V, 11
 - enacting clause, required form, 43-508.1
 - failure by governor to return within time allowed, bill becomes law, 43-505
 - governor, submission to for signature, 1972 Const., VI, 10; 43-501
 - local government duties imposed by enactment, means of financing to be provided, 43-517
 - certain legislation excepted, 43-518
 - private religious, charitable, industrial, educational or benevolent purposes, appropriation for prohibited, 1972 Const., V, 11
 - special or local acts prohibited, 1972 Const., V, 12
 - subject clearly expressed in title, 1972 Const., V, 11
 - veto by governor, 1972 Const., VI, 10
 - legislature not in session, 43-504
 - vote required for passage, 1972 Const., V, 11
- Budget, submission by governor, 1972 Const., VI, 9
- Code of ethics for members, 1972 Const., XIII, 4
- Commission for redistricting and reapportioning legislative and congressional districts, 1972 Const., V, 14
- Committees, power to establish, 1972 Const., V, 10
 - functions while legislature not in session, 43-718
 - meetings open to public, 1972 Const., V, 10
 - priorities, committee on created, composition, functions, 43-717
 - determination of priorities for standing and select committees, 43-719
- Compensation of members, 1972 Const., V, 5; 43-310
 - legislature not in session, 43-310.1
- Composition of legislature, 1972 Const., V, 1
- Continuity of government in emergency, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
- Continuous body for two-year periods, 1972 Const., V, 6
- Effective dates of new constitutional provisions
 - accelerated effective date of V, 6, 14, 1972 Const., Transition Schedule, Sec. 1
 - delayed effective date of V, 1 to 3, 1972 Const., Transition Schedule, Sec. 2
- Election of members, 1972 Const., V, 3
 - contested election, power of courts to try, 1972 Const., V, 10
 - each house judge of election and qualifications of members, 1972 Const., V, 10
- Emergency session of state senate for purpose of election of president *pro tempore* to assume governorship in event of enemy attack, 82-1309
- Expense allowances for members, 43-310
- Expulsion of member, vote required, 1972 Const., V, 10
- Fiscal notes in legislative bills
 - background information to be made available to legislators, 43-1006
 - bills requiring note, 43-1001
 - comment on merits of bill prohibited, 43-1004
 - committee reports to include note, 43-1001
 - committee request for note, 43-1005
 - contents of notes, 43-1004
 - department of administration and affected agencies to prepare note, 43-1002
 - house request for note on second reading, 43-1005
 - presiding officer to determine need for note on introduction of bill, 43-1001
 - reference of completed note to committee, 43-1003
 - reproduction and distribution of note, 43-1003
 - sponsor's request for note, 43-1005
 - time allowed for preparation of note, extension, 43-1002

INDEX

References are to Title and Section numbers

LEGISLATURE (Continued)

Governor returning bill with recommendation for amendment, procedure, Art. VI, 10; 43-502

Governor's power to convene legislature, 1972 Const., V, 6, VI, 11

Hearings open to public, 1972 Const., V, 10

House of representatives, number of members, 1972 Const., V, 2

 elected officers, 43-214.1 (2)

 one member for each district, 1972 Const., V, 14

 sergeant-at-arms, appointment by speaker, 43-214.1 (2)

Impeachment of officers, procedure, 1972 Const., V, 13

Initiative and referendum powers reserved by the people, 1972 Const., V, 1—See INITIATIVE AND REFERENDUM

Journal of proceedings to be kept, 1972 Const., V, 10

Legislative Finance Act, 43-1109 to 43-1119

 budget amendments, review by analyst, 43-1119

 definition of terms, 43-1110

 employment of personnel, 43-1116

 fiscal analyst, office created, 43-1111

 authority and duties of analyst, 43-1115

 employment by legislative finance committee, 43-1113

 legislative finance committee created, 43-1111

 compensation and expenses of members, 43-1112

 composition, appointment and terms of members, 43-1112

 officers, election, 43-1112

 powers and duties, 43-1113

 vacancies, how filled, 43-1112

 purpose of act, 43-1109

 title and citation of act, 43-1109

Length of sessions, 1972 Const., V, 6

Lobbying—See LOBBYING

Messages submitted by governor, 1972 Const., VI, 9

Mileage allowances to members for travel in own vehicles, 59-801

 liability for approval of excessive amounts, 59-802

Number of members, 1972 Const., V, 2

Oath of office, 1972 Const., III, 3

Officers chosen from members, 1972 Const., V, 10

Organization

 pre-session caucus, 43-218

 rosters prepared from election records by secretary of state, 43-206.1

 tie vote, candidate of governor's party elected, 43-210.1

Other public office, disqualification of legislators from holding, 1972 Const., V, 9

Post-attack continuity in government, 1972 Const., III, 2; 82-3801

 to 82-3809—See WAR, Continuity in government

Power of legislature, 1972 Const., V, 1

Publication of proceedings

 definitions, 43-901

 fees for copies, 43-902

 free copies, who receives, 43-903

 public officials exempt, 43-904

Punishment of member, vote required, 1972 Const., V, 10

Qualifications of members, 1972 Const., V, 4

 election and qualifications judged by each house, 1972 Const., V, 10

Quorum, majority of each house constitutes, 1972 Const., V, 10

Recess, limitations upon, 1972 Const., V, 10

Salary of members, 1972 Const., V, 5; 43-310

 legislature not in session, 43-310.1

Senate, number of members, 1972 Const., V, 2

 district, composition of, 1972 Const., V, 14

 elected officers, 43-214.1

 sergeant-at-arms, appointment, 43-214.1 (1)

Separation of powers, 1972 Const., III, 1

INDEX

References are to Title and Section numbers

LEGISLATURE (Continued)

Sessions

- biennial meetings, Const., V, 6
- open to public, 1972 Const., V, 10
- special sessions, 1972 Const., V, 6, VI, 11

Size of legislature, 1972 Const., V, 2

Special session convened by governor or majority of legislators, 1972 Const., V, 6; 43-319

- governor's power to convene legislature, 1972 Const., VI, 11
- legislature in session, call of future special session by majority vote, 43-320
- legislature not in session, poll of members, 43-321
 - affirmative reply to poll, notice of date and time of special session, 43-324
 - ballot on request for special session, 43-322
 - failure to approve special session, effect, 43-325
 - written request of members, number required, contents, 43-321
- members' power to convene legislature, 1972 Const., V, 6

Structure of legislature, 1972 Const., V, 1

Student interns

- assignment of interns by legislative council, 43-726
- funding of program not obligatory upon legislature, 43-730
- guidelines for each intern established by legislative council, 43-727
- interns to be named by presidents of colleges and universities, 43-724
 - number of interns, how chosen, 43-723
- program established as policy of state, 43-721
- program not mandatory on institutions of higher learning, 43-729
- qualifications of interns, 43-725
- responsibility of intern to legislator to whom assigned, 43-728
- severability of provisions, 43-731
- students eligible, 43-721
 - private colleges establishing intern program, 43-721
- term of intern service, 43-722
- title of law, 43-720

Subcommittees to be appointed by legislative standing committees, composition, functions, 43-716

Terms of members, 1972 Const., V, 3

- legislators elected before effective date of new constitution, 1972 Const., Transition Schedule, Sec. 5
- senators first elected under new constitution, 1972 Const., Transition Schedule, Sec. 5

Vacancies, how filled, 1972 Const., V, 7

- county commissioners, appointment by, 43-215
 - alternate method on failure to receive majority vote, 43-216
 - "vacancy" defined, 43-217

Vesting of legislative power in legislature, 1972 Const., V, 1

LETTERS OF CREDIT

Advice of credit by another bank, obligations assumed by advising bank, 87A-5-107

Anticipatory repudiation by issuer, rights of beneficiary after, 87A-5-115

Assignment of right to draw under letter, effect, 87A-5-116

Authenticity of third-party documents presumed, 87A-1-202

Banks' power to issue letters, 5-1001

Cancellation of credit, liability of issuer, 87A-5-115

Citation of Uniform Commercial Code chapter, 87A-5-101

Confirmation of credit by another bank, obligation assumed by confirming bank, 87A-5-107

Consideration not required to establish credit, 87A-5-105

Contract underlying credit, issuer not responsible for performance, 87A-5-109

Course of dealing between parties, 87A-1-205

Definition of terms, 87A-5-103

- general definitions in Uniform Commercial Code, 87A-1-201
- index of definitions, 87A-5-103

INDEX

References are to Title and Section numbers

LETTERS OF CREDIT (Continued)

- Dishonor of draft or demand for payment
 - time allowed for, 87A-5-112
 - wrongful dishonor, liability of issuer, 87A-5-115
- Documentary draft credit, application of chapter to, 87A-5-102
- Documents related to credit
 - adequacy of document governed by chapter on letters of credit, 87A-7-509
 - examination of documents by issuer, 87A-5-109
 - insolvency of issuer or bank, rights of parties, 87A-5-117
 - noncomplying document in fact, payment by issuer of letter on, 87A-5-114
 - relinquishment by person presenting demand for payment, 87A-5-110
 - wrongful dishonor of draft or demand for payment, rights of person entitled to honor after, 87A-5-115
- Erroneous advice of credit, liability of original issuer, 87A-5-107
- Formal requirements for credit, 87A-5-104
- Good faith required, 87A-1-203, 87A-5-109
- Honor of draft or demand for payment, duty and privilege of issuer, 87A-5-114
- Indemnity agreement to obtain honor, negotiation or reimbursement, 87A-5-113
- Insolvency of issuer or advising or confirming bank, effect, 87A-5-117
- Issuer's obligation to his customer, 87A-5-109
- Modification of credit, when permitted and effect, 87A-5-106
- Notation credit, obligation of party paying on, 87A-5-108
- Order of payment of competing drafts or demands, 87A-5-108
- Partial use of credit authorized, 87A-5-110
- Phrasing of credit, no particular form required, 87A-5-104
- Reimbursement of issuer after payment of draft or demand, 87A-5-114
- Repudiation of credit by issuer, liability, 87A-5-115
- Reservation of rights by party while performing or accepting performance, 87A-1-207
- Revocation of credit, when permitted and effect, 87A-5-106
- Sales contract requiring furnishing of letter of credit, 87A-2-325
- Scope of Uniform Commercial Code chapter, 87A-5-102
- Security interest in letter perfected by possession of secured party, 87A-9-305
- Short title of Uniform Commercial Code chapter, 87A-5-101
- Telegraphic letter, sufficiency, 87A-5-104
- Time allowed for honor or rejection of draft or demand for payment, 87A-1-204, 87A-5-112
- Time of establishment of credit, 87A-5-106
- Transfer of right to draw under credit, 87A-5-116
- Transmission and translation risk borne by customer, 87A-5-107
- Usage of trade, application, 87A-1-205, 87A-5-109
- Warranties on transfer or presentment of draft or demand for payment, 87A-5-111

LIBEL

- Criminal defamation, 94-8-111—See CRIMINAL OFFENSES, Criminal defamation
- Notice to publisher or broadcaster and opportunity to correct, 64-207.1
- Truth as evidence in suits and prosecutions, determination of law and facts by jury, 1972 Const., II, 7

LIBRARIES

- Depreciation reserve fund, establishment in cities and counties authorized, 44-229
 - investment of fund, crediting of interest, 44-231
 - sources and identification of funds, 44-230
- Free public libraries
 - board of trustees, appointment, 44-221
 - compensation, 44-221
 - composition of board, 44-221
 - powers and duties, 44-222
 - term of office, 44-221
 - vacancies, 44-221
 - chief librarian, appointment by board, 44-223
 - "city" defined, 44-227
 - continued existence of all public libraries, 44-228
 - establishment of library by resolution, petition or election, 44-219
 - exemption from county tax of city or town with own library, 44-226

INDEX

References are to Title and Section numbers

LIBRARIES (Continued)

Free public libraries (Continued)

- financing public library by city or county tax levy or bonds, 44-220
- merging of boards, institutions and agencies in providing library services, 44-225
- personnel, appointment and compensation, 44-223
- purpose of act, 44-218
- use of library, 44-224

Historical and miscellaneous library

- antique automobile collection, disposition of admission fees, 44-529
- independent of other libraries, 44-518

Interstate library compact

- administrator, executive officer of state library commission, 44-602
- text of compact, 44-601

Joint city-county libraries authorized, apportionment of expense, tax levy, 44-219.1

- board of trustees to govern, composition, organization, powers and duties, 44-219.2

Joint county or regional library, participation of other governmental units, 44-213

Joint library services between city or county unit of university of Montana, establishment by contract authorized, 44-213

- erection of building to be approved by legislature, 44-213

Library federations, establishment in designated areas authorized, 44-131 (9), 44-212

- appropriation for support of federation, tax levy authorized, 44-215

- area designated by library commission, 44-131 (9)

- autonomy over libraries of participating entities may be retained, 44-212

- board of trustees, composition, appointment of members, 44-214

- advisory powers of board, 44-214, 44-214.1

- budgets and administrative policies controlled by trustees of participating libraries, 44-214.1

- definition of library federation, 44-212 (1)

- disagreement among participants resolved by library commission, 44-214.1

- expense apportioned between participating entities, 44-212

- formation of federation by contract between local governing entities or boards of library trustees, 44-212 (1)

- headquarters library designated by library commission, 44-131 (9), 44-212

- moneys collected by participating entities transferred to custodian of funds, 44-212

- participation of other governmental units within designated area, 44-213

- special tax levy to be submitted to voters, 84-3804 (2)

- state grant programs, 44-304 to 44-308

- administration by library commission, 44-305

- allocation of funds for grant programs, 44-307

- basic grant given to all headquarters libraries, purpose, 44-306 (1)

- distribution of grants, methods and procedures, 44-308

- establishment grants, definition, purpose, 44-306 (2)

- purpose of act, 44-304

- semiannual report of federations receiving money, contents, 44-305

- special project grants, definition, purpose, 44-306 (3)

- withdrawal by participating entity authorized, requirement, 44-212

Library networks, definition, establishment, 44-212 (2)

School library required, 75-7517

- policies established by trustees, 75-7518

- public use of school libraries, 75-7518

- reports to state department on school libraries, 75-7520

- sectarian publications not to be included, 75-7521

- selection of books for libraries, 75-7519

- standards of accreditation, 75-7517

State law library

- accounts, approval by board of trustees, 44-410

- construction of supreme court and law library building

- acquisition of land, 78-1203

- architects and engineers, employment authorized, 78-1202

- bonds, indentures and notes, 78-1205 to 78-1208

- borrowing authorized, 78-1201, 78-1204

- budget act inapplicable, 78-1209

INDEX

References are to Title and Section numbers

LIBRARIES (Continued)

- State library commission created, composition and terms of office, 44-127, 82A-509
 - administration of state grant programs, 44-305
 - allocated to state board of education, certain functions retained in board of trustees, 82A-501.1
 - continuation of commission and functions, 82A-509 (1)
 - powers of commission, 44-131
 - travel expenses of members, 44-127
- State publications distribution center
 - creation of center, 44-133
 - definition of terms, 44-132
 - depository contracts, eligibility and standards, 44-135
 - exempt state agencies and officers, 44-139
 - general public distribution prohibited, 44-138
 - inter-library loan of state agency publications, 44-134
 - lists of available publications, distribution by center, 44-136
 - regulations, made by state library commission, 44-133
 - sale of state agency publications, 44-134
 - state agency lists of current publications furnished to center, 44-137
 - state agency publications deposited with library, 44-134
- Tax exemption of property, 1972 Const., VIII, 5

LICENSES

- Affirmative defense, M. R. Civ. P., Rule 8(c)
- County licenses, disposition of proceeds, 84-2708
- Dog licensing, 16-4601 to 16-4615—See DOGS
- Itinerant merchants, 3-3201 to 3-3215—See AGRICULTURE, Itinerant merchants
- Produce wholesalers, 3-3301 to 3-3312—See AGRICULTURE, Produce wholesalers
- Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 8(a), Table A

LICENSURE OF CRIMINAL OFFENDERS

- Conviction not to operate as bar to occupational license, 66-4003
- Findings required of licensing authority for denial of license, 66-4003
- Legislative purpose, intent and policy, 66-4001, 66-4002
- Licensure during or on completion of parole or probation supervision, 66-4005
- Written statement of reasons for denial by licensing authority required, 66-4004

LIE DETECTOR

- Tests required as condition to employment prohibited, violation as misdemeanor, 41-119
 - not applicable to law enforcement agencies, 41-120

LIENS

- After-acquired property, lien on, 45-109
- Agisters' lien
 - possession of property, right of lien holder to take, 45-1107
 - priority, 45-1106
- Artisan's lien
 - possession of property, right of lien holder to take, 45-1107
 - priority, 45-1106
- Bulk Transfer chapter inapplicable to lien foreclosure, 87A-6-103
- Compensation for expense, lien holder not entitled to, 45-116
- Criminal offenses, judgment to pay fine constitutes lien, 95-2208
- Definition of term, 19-103
- Factor's lien, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
- Farm laborers' lien, duty to acknowledge and discharge on satisfaction, 45-911
- Federal tax lien, 45-1501 to 45-1507—See TAXATION, Federal tax lien
- Forfeiture of property subject to lien, contracts for void, 45-112
- Future property, lien on authorized, 45-109
- Hail insurance liens, duty to acknowledge and discharge on satisfaction, 45-707
- Income tax lien, release or discharge of property from, 84-4958

INDEX

References are to Title and Section numbers

LIENS (Continued)

- Inheritance, estate or death taxes, lien of state follows property sold or distributed, 91A-3-1010
- Labor and material on oil and gas leasehold or pipeline, 45-1003
 - effective date of lien, 45-1004.2
 - perfection of lien, procedure, 45-1004.1
 - priority, 45-1004.2, 45-1004.3
- Mechanic's lien
 - bond filed by property owner, amount and conditions, 45-513
 - action on bond, 45-515
 - discharge of lien on filing of bond, 45-514
 - notice of completion, contents, filing and publication, 45-502.1
 - events constituting completion of work, 45-502
 - time for perfection of lien after filing notice, 45-502
 - Uniform Commercial Code chapter not applicable, 87A-9-104
- Redemption from lien
 - restraining contracts void, 45-112
 - time when property may be redeemed, 45-301
- Restoration of property to owner extinguishing lien, exceptions, 45-308
- Seed liens
 - filing and retention of records, 16-2922
 - destruction of records, when allowed, 16-2923
 - satisfaction of lien, duty to acknowledge, 45-704
- Spraying lien on crops, acknowledgment of satisfaction and discharge, 45-1410
- Threshermen's lien
 - filing and retention of records, 16-2922
 - destruction of records, when allowed, 16-2923
 - satisfaction of lien, duty to acknowledge and discharge, 45-809
- Unit ownership property, attachment and release of liens against, 67-2324
 - blanket liens released on conveyance of unit, 67-2323
 - common expenses, lien against individual units for, 67-2326
 - foreclosure of lien, 67-2327
 - purchaser at foreclosure not liable for expenses, 67-2329
 - rent paid by unit owner after foreclosure, 67-2328
 - transfer of liens on removal of property from act, 67-2335
 - consent of lien holders required for removal, 67-2332

LIEUTENANT GOVERNOR

- Candidacy for public office during term authorized, 1972 Const., VI, 5
- Creation of office, 82-1702.1
- Delegation of governor's constitutional powers prohibited, 1972 Const., VI, 4
- Duties, 1972 Const., VI, 4; 82-1702.2, 82-1702.3
- Election, joint filing with candidate for governor, 1972 Const., VI, 2
- Executive branch, member of, 1972 Const., VI, 1
- Impeachment, subject to, 1972 Const., V, 13
- Oath of office, 1972 Const., III, 3
- Other government employment prohibited during term, 1972 Const., VI, 5
- Qualifications, 1972 Const., VI, 3
- Residence at seat of government, 1972 Const., VI, 1
- Salary, 1972 Const., VI, 5; 25-501
- Succession to office of governor, 1972 Const., VI, 6, 14
- Term of office, 1972 Const., VI, 1
- Vacancy in office, how filled, 1972 Const., VI, 6
 - inability to discharge powers and duties of office, legislative declaration of vacancy, 59-609
- Vacancy in office or incapacity of governor and lieutenant governor, 82-1304.1 to 82-1304.5—See GOVERNOR, Vacancy in office of governor and lieutenant governor

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

- Annual report of directors of association, 40-5815
- Annuity account to be maintained by association, 40-5806
- Annuity contracts within scope of law, 40-5803

INDEX

References are to Title and Section numbers

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION (Continued)

- Assessment of member insurers to provide funds for operation of association, 40-5809
 - abatement or deferral of assessment rendering member insurer unable to fulfill obligations, 40-5809 (4)
 - amount abated or deferred assessed against other member insurers, 40-5809 (5)
 - amount of assessment, apportionment among member insurers, 40-5809 (3)
 - assessment obligation as appropriate factor in determining premium rates, 40-5809 (7)
 - certificate of contribution issued for each assessment, priorities, 40-5809 (8)
 - classes of assessments and purposes of each class, 40-5809 (2)
 - legal actions for recovery of unpaid assessments authorized, 40-5808 (11) (b)
 - maximum annual assessment, 40-5809 (4)
 - additional assessment in subsequent years authorized, 40-5809 (5)
 - refund of excess of assessments to member insurers, 40-5809 (6)
 - suspension or revocation of authority to transact business for failure to pay assessment, 40-5811 (2)
 - levy of forfeiture as alternative, amount, 40-5811 (2)
- Assets of impaired insurer attributable to covered policies to be so used, 40-5814 (3)
 - "assets attributable to covered policies" defined, 40-5814 (3)
 - association deemed creditor of impaired insurer for deficiency, 40-5814 (3)
- Association created as nonprofit legal entity, 40-5806
 - board of directors, composition, selection of members, filling of vacancies, 40-5807
 - service without compensation, expense reimbursement, 40-5807 (3)
 - membership of insurers as condition to authority to transact business in state, 40-5806
- Borrowing power of association, evidence of indebtedness as legal investment for domestic insurers, 40-5808 (11) (c)
- Citation of law, 40-5801
- Commissioner of insurance as immediate supervisor of association, 40-5806 (2)
 - annual report of association to be submitted to commissioner, 40-5815
 - conservator in liquidation or rehabilitation proceedings of foreign or alien member insurer, 40-5811
 - detection and prevention of insurer impairments, association to aid commissioner, 40-5812
 - examination and regulation of association by commissioner, 40-5815
 - exercise of association powers subject to commissioner approval, 40-5808
 - immunity from liability for action taken in performance of powers and duties, 40-5818
 - judicial review of orders of commissioner, 40-5811 (3)
 - liquidator or rehabilitator in liquidation or rehabilitation proceedings of domestic insurer, 40-5811 (1) (d)
 - plan of association operation, approval of commissioner required, 40-5810
 - powers and duties generally, 40-5811
 - review of action of board of directors or association, 40-5811 (3)
 - selection of directors subject to approval of commissioner, factors considered, 40-5807
 - special deputy commissioner, recommendation by association, 40-5813
- Death benefit liability limited, 40-5808 (10)
- Defense of improper claims authorized, 40-5808 (11) (f)
- Definition of terms, 40-5805
- Delegation of association duties, when authorized, 40-5810 (4)
- Distribution to stockholders of impaired insurer
 - dividends paid controlling affiliate, when recoverable, 40-5814 (6)
 - prohibited before recovery of assessments by association, 40-5814 (4) (b)
- Examination of association by commissioner, 40-5815
- Health insurance account to be maintained by association, 40-5806
- Health insurance within scope of law, 40-5803
- Immunity from liability of association and members, 40-5818
- Impaired insurers
 - advice and assistance by association to commissioner, 40-5808 (7)

INDEX

References are to Title and Section numbers

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION (Continued)

Impaired insurers (Continued)

- domestic insurers, powers and duties of association, 40-5808 (1) (3)
- failure of association to perform duties, commissioner to act, 40-5808 (3)
- foreign or alien insurer, powers and duties of association, 40-5808 (2) (4)
- domiciliary jurisdiction providing protection, association without liability to domestic policyholders, 40-5808 (6)
- failure of association to perform, commissioner to act, 40-5808 (4)
- liens, moratoriums or similar means imposed, findings of commissioner required, 40-5808 (5)
- person receiving benefits deemed to have assigned rights under covered policy, 40-5808 (9)
- prevention of impairment, association to aid commissioner in detection and prevention, 40-5812
- scope and limit of association's liability, 40-5808 (10)
- standing of association to appear in court, 40-5808 (8)
- subrogation rights of association, 40-5808 (9)

Insurance laws applicable to association, 40-5806

Issuance of new insurance policies or annuity contracts prohibited, 40-5808

Liberal construction, 40-5804

Life insurance account to be maintained by association, 40-5806

Life insurance within scope of law, 40-5803

Liquidation, rehabilitation or conservation proceedings against member insurer

- association's standing in court having jurisdiction, 40-5808 (8)
- commissioner as liquidator, rehabilitator or conservator, 40-5811 (1) (d)
- equitable distribution of ownership rights, factors considered, 40-5814 (4) (a)
- negotiating and contracting with liquidator, rehabilitator or conservator, power of association, 40-5808 (11) (e)
- powers and duties of association, 40-5808 (3) (4)
- receiver recovering from controlling affiliate dividends paid by impaired insurer on capital stock, 40-5814 (6)

Plan of operation of association submitted to commissioner, contents, 40-5810

- association failing to submit plan, commissioner to promulgate rules, 40-5810 (1) (b)

rules superseded by subsequently submitted plan, 40-5810 (1) (b)

compliance with plan by member insurers required, 40-5810 (2)

delegation of association duties as authorized provision of plan, 40-5810 (4)

effective upon approval by commissioner, 40-5810 (1) (a)

Powers and duties of association, 40-5808

Purpose of law, 40-5802

Records of negotiations and meetings of association required, when available for public inspection, 40-5814 (2)

Sale of insurance by use of protection afforded as unfair trade practice, 40-5814 (5)

Scope and application of law, 40-5803

Stay of proceedings pending legal action by association, 40-5819

Subrogation of association to rights of person receiving benefits, 40-5808 (9)

Suspension or revocation of member insurer's authority to transact insurance business in state, grounds, 40-5811

Tax exemption of association, 40-5816

Tax write-off of certificates of contribution, calendar-year percentages, 40-5817(1)

offset against premium tax liability, 40-5817(2)

recovery of amount written off, payment to commissioner, 40-5817(3)

LIFE ESTATE

Termination upon payment of inheritance tax on estate of life tenant, 91A-3-1205

LIMITATION OF ACTIONS

Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)

Bond issues of state or municipalities, actions and defenses relating to issuance, 93-2612

Bulk transfers, actions to invalidate, 87A-6-111

Commercial paper, time of accrual of action, 87A-3-122

Construction of improvements to real property, action for damages from, 93-2619 to 93-2623

INDEX

References are to Title and Section numbers

LIMITATIONS OF ACTIONS (Continued)

Criminal offenses

- commencement of period of limitations, determination as one basis for classification of offenses, 94-1-105
- commencement of period on day following commission of offense, 94-1-106(4)
- felony, 94-1-106(2)
- homicide, 94-1-106(1)
- misdemeanor, 94-1-106(2)
- prosecution commenced when indictment found or information or complaint filed, 94-1-106(5)
- theft involving breach of fiduciary obligation, extension of period, 94-1-106(3)
- time when offense committed, 94-1-106(4)
- tolling of period of limitation, 94-1-107
- Decedents' estates, barred claims not allowed or paid, 91A-3-802
- Injury to real or personal property, 93-2607
- Medical malpractice, 93-2624
- Mining or other underground work, time of accrual of cause of action for injury by, 93-2607
- Probate contest, 91-1107
- Sale of goods contract, actions arising out of, 87A-2-725
- Subdivided lands, accrual of cause of action arising from sale or lease outside state, 67-2115
- Support obligations of father of illegitimate child, 93-2901-3
- Tax overpayment, time for filing claim for refund, 84-726
- Trust indenture foreclosure proceedings, 52-407
- Uniform Probate Code, actions for fraud, 91A-1-106

LIQUEFIED PETROLEUM PRODUCTS

See PETROLEUM PRODUCTS, 60-223 to 60-233

LIVESTOCK

Board of livestock

- administrator appointed by board, qualifications, duties, 46-203, 46-204
- expertise and judgment of administrator considered by board in enforcement actions, 46-209.1
- chairman designated by governor, 82A-1303
- creation of board, composition, appointment, qualifications, terms, and compensation of members, 82A-1303
- definition, 46-103.1(1)
- existing members continued in office, qualifications of new members, 82A-1303, 82A-1303.1
- feedlots, duties, 46-239.1 to 46-239.3—See Feedlots, below
- qualifications of members, transition, 82A-1303, 82A-1303.1
- Brands, department as recorder of marks and brands, 46-601
- adoption of brand, recording, fee, 67-205
- Criminal mischief injuring or killing domesticated hoofed animal, punishment, 94-6-102(2)
- Cruelty to animals as criminal offense, punishment, 94-8-106
- Dead animals, unlawful disposition, penalty for violations, 69-4518, 69-4519
- Dealers in livestock
 - bond required of dealer, 46-2904
 - unbonded business prohibited, 46-2902
 - definition of terms, 46-2901
 - enforcement by department, 46-2907
 - false entries or filings prohibited, 46-2902
 - insolvent dealer prohibited from carrying on business, 46-2902
 - inspection of records by department, 46-2905
 - license to engage in business, 46-2903
 - refusal to issue or renew license, grounds, 46-2903.1
 - suspension or revocation, grounds, notice, hearing, appeal, 46-2903.2
 - unlicensed business prohibited, 46-2902
 - penalties for violations, 46-2906
 - records required of dealers, 46-2905
 - rules and regulations, 46-2907

INDEX

References are to Title and Section numbers

LIVESTOCK (Continued)

Department of livestock created, 82A-1301

- audit of bills for expense, payment from earmarked revenue fund, 46-105
- claims against department to be verified by claimant, 46-202
- definition, 46-103.1
- functions of department, 82A-1301.1
- members and officers of department not personally liable, exception, 46-243
- poultry, duties of department, 46-209—See POULTRY
- powers and duties of department, 46-104
- rodent control functions, 3-2701—See AGRICULTURE, Rodent pest control
- rules of department
 - inspection, treatment or disposition of diseased or exposed livestock, 46-211
 - quarantine of diseased or exposed livestock, 46-211
 - witnesses, compelling attendance, administration of oaths, affidavits, 46-240

Disease control area, assessment roll used for verification of signatures to petition, duties of county assessor, 46-213

- failure to gather livestock for inspection, testing, treatment or vaccination as misdemeanor, 46-214

Diseased carcasses, sale prohibited without inspection, 46-247

- violation as misdemeanor, penalty, 46-248

Diseases of livestock, prevention, extirpation and control by department, 46-208

- duty to report disease, or exposed animals, 46-236
- violation, civil liability for, 46-239

Driving of livestock, prohibited acts

- customary range, driving from, punishment, 94-3568 re des. 46-3002
- dogging as misdemeanor, punishment, 94-3567 re des. 46-3001
- railroad tracks, driving livestock on prohibited, punishment, 94-3569 re des. 46-3003

Estrays

- definition of "estrays," 46-1005
- inspection outside state, powers and duties of inspectors, 46-1011
- possession taken by department, 46-1001
- proceeds of sale, disposition, 46-1006
- publication of description of estrays sold, 46-1006
- tally list transmitted to department and brand inspector, 46-1008

Expenses, how paid, 46-230, 46-231

Feedlots, 46-239.1 to 46-239.3

- dead animal in feedlot, notice to board of livestock required, 46-239.2
- disposal of carcass prior to inspection prohibited, 46-239.2
- violation by owner of feedlot as misdemeanor, punishment, 46-239.3
- written notice to owner of animal required, 46-239.2
- definition, 46-239.1

Grazing on highway prohibited, exceptions, penalty for violation, 32-21-176 to 32-21-178

Herd districts created jointly by two or more counties, 46-1501—See HERD DISTRICTS

Herding or driving a herd on public highways, requirements for, violation as misdemeanor, 32-21-179, 32-21-180

Hides

buyers and dealers

- acting without license, penalty, 46-1107.1
- fees for licenses, disposition, 46-1107
- revocation of license for violations of act, 46-1107.1
- certificate from buyer of hide required, 46-1101.2
- falsification of certificate, penalty, 46-1102
- definition of terms, 46-1101.1
- identification tag to be affixed, 46-1101.2
- penalty for failure to affix tag, 46-1102
- unknown ownership, seizure and sale of hides, 46-1114

Highways through open range, fencing along, 32-2426, 32-2427

"open range" defined, 32-2426

Hours of labor, stock-raising employment excepted from maximum hours provision, 1972 Const., XII, 2

INDEX

References are to Title and Section numbers

LIVESTOCK (Continued)

Illegal branding or altering or obscuring brand, punishment, 94-6-312

Impounding by cities and towns

department to ascertain owner, notice to city or town, 46-2007

service of notice on department, 46-2004

Inspection before sale or removal from county

certificate of inspection required, 46-801.2

rodeo animals, certificate as travel permit in state, endorsement required, 46-801.2 (5) (c)

definitions, 46-801.1

exempt livestock and transactions, 46-801.3

fees for inspection and permit, 46-804

penalties for violation of act, 46-806

removal of livestock from state prohibited without certificate of inspection, 46-801.4

seizure, retention, and sale of suspect animals, 46-803

sheep removal permits

fee for issuance of permit, 46-811

form of permit, 46-811

misdemeanor to remove sheep without permit after order, 46-81C

petition of sheep raisers requesting permit order, 46-809

publication of notice, 46-812

removal of permit requirement, 46-813

unauthorized removal from state as felony, 46-808

Inspectors and detectives, appointment by department of livestock authorized, 46-701

exclusive control and direction of department of livestock, 46-704

qualifications, examination devised by board of livestock, 46-701

transportation permits, issuance, 46-801.2(5)

License requirements unaffected by dairy products provisions, 3-24-129

Markets

cattle, transfer of title in interstate shipments, 87A-2-401

discontinuance of market on order of board, grounds, 46-910

investigation of licensees by board, hearing, order, 46-916

license fee, deposit and use, 46-911

off-premise sale prohibited without prior approval of board, 46-907.1 (2)

occasional off-premise sales, when authority granted for, 46-907.1

"off-premise sale" defined, 46-906 (7)

receipt for livestock consigned for sale, 46-918.1

regulation by board, 46-907

rules, adoption and enforcement by board, 46-914

sales of stray stock, disposition of proceeds, 46-904

unlicensed operator conducting breed sale, breed association sale, or test station sale, requirements, 46-906.1

"test station sale" defined, 46-906 (8)

Marks and brands, fees for recording, 46-609

Obliterated marks and brands, compensation for animals killed, 46-707

Pork Research and Marketing Act, 46-3101 to 46-3113

committee appointed by governor, composition, district representation, terms of office, 82A-1306

allocated to department of livestock for administrative purposes, 82A-1306 (8)

election of chairman, 46-3105

meetings, frequency, 46-3105

per diem of members, 46-3103

powers of committee, 46-3106

removal from office, grounds, 46-3104

contracts with other organizations authorized, 46-3111

co-operation of committee with other public and private organizations, 46-3111

definition of terms, 46-3102

duration of act, reversion of funds upon expiration, 46-3113

gifts, grants or donations, acceptance by department authorized, 46-3109

invoice delivered by purchaser to producer at time of settlement, contents, 46-3108

amount of assessment collected and remitted to be shown, 46-3108 (1) (c)

INDEX

References are to Title and Section numbers

LIVESTOCK (Continued)

Pork Research and Marketing Act (Continued)

- monthly report of purchaser and remittance of assessment to department, 46-3108 (2), (3)
 - alteration of report as misdemeanor, punishment, 46-3108 (3)
- per head tax on swine deducted from sale proceeds, remittance to department, 46-3107
- request of producer for refund of assessment, formal requirements and accompanying documents, 46-3108 (4)
- revenue deposited in revenue fund for use of committee, disbursement, 46-3110
- short title, 46-3101
- violation of act as misdemeanor, penalty, 46-3112

Protective districts

intercounty districts

- declarations by county commissioners to form district, 46-2801
- discontinuance of district, 46-2805
- formation of districts authorized, 46-2801
- petitions for formation of district, 46-2801
- protective committee
 - powers and duties of committee, 46-2803
 - selection of members, 46-2802
- removal of area from district, 46-2805
- tax levy for special deputy fund, 46-2804

one-county districts

- declaration by county commissioners to form district, 46-2806
- discontinuance of district, 46-2810
- formation of districts authorized, 46-2806
- petition for formation of district, 46-2806
- protective committee
 - powers and duties of committee, 46-2808
 - selection of members, 46-2807
- tax levy for special deputy fund, 46-2809

Ram or he-goat running at large prohibited, violation as misdemeanor, 46-1701

Range livestock, method of taking possession by mortgagee or assignee, 93-4344

filing of papers by county clerk, 93-4346

Road construction areas, running at large prohibited, 32-319

impounding of animals at large, 32-320

penalty for violation, 32-321

Sanitary conditions in areas occupied by livestock and processing facilities, supervision under rules adopted by department, 46-208

cleaning and disinfecting carriers' facilities, 46-231

diseases of livestock, powers of department, 46-208

biologic remedies or curative agents for treatment of disease, supervision and control of, 46-208 (7)

fees for tests and services, imposition and collection, 46-208 (3)

slaughter of exposed livestock and destruction of facilities authorized, indemnity to owner, 46-208 (9), (10)

entry on premises of others for performance of duties authorized, 46-207

expense incurred, how paid, 46-230

federal veterinarians or lay inspectors appointed as deputies or agents of department, powers and duties, 46-206

inspection, testing, and quarantine of livestock imported into state, 46-208 (5)

manufactured and refined foods for livestock, supervision and control of, 46-208 (7)

meat and dairy processing and other facilities, exemption from certain licensing requirements, 46-233

meat inspection, fees, conformity to federal requirements, 46-208 (8)

milk plants and dairies, license required for operation of business, 46-232

denial, suspension or revocation, grounds, 46-232(2)

expiration of license, 46-232(2)

fees for licenses, disposition of funds collected, 46-232(2)(4)

restraining order available, prohibiting violations, 46-232

violation as misdemeanor, 46-232

INDEX

References are to Title and Section numbers

LIVESTOCK (Continued)

Sanitary conditions (Continued)

- municipal corporations, inspection of processing and other facilities authorized, ordinances in conflict with state law unenforceable, 46-217
- processing facilities, supervision, inspection, and control by department, 46-208 (6)
- quarantine of livestock and areas occupied by livestock, 46-208(1)
- sale of carcasses unsanitarily slaughtered or handled prohibited, enforcement by department, 46-216
- scope of law, effect of other laws, 46-233
- state and local boards of health to co-operate with department, 46-234
- statistical data required of producers and handlers of meat or dairy products, 46-208(10)
- violation of law, civil liability, 46-239

Secured transactions, application of loan law to, 87A-9-203

Security agreements concerning livestock, notices filed with department of livestock, 52-319

- collection of debt, department not responsible for, 52-323
- contents of notices, 52-320
- fees chargeable, disposition, 52-322
- listing of notices with stock inspectors and on records of marks and brands, 52-319
- livestock market not liable to secured party in absence of listing, 52-319
- satisfaction of agreement, duty to file, 52-321

Sheep, abandonment by shepherd, punishment, 94-35-200 redes. 46-3004

Slaughterhouses, meat packing houses, or meat depots, license required for operation, fee, expiration, renewal, revocation, 46-235

Slaughtering of diseased animals and destruction of buildings and facilities upon order of department, 46-208(8)(9)

- amount of compensation paid for animals slaughtered, 46-218
 - animals injured or killed in course of inspection or testing, 46-218(4)
 - class 1 animals, 46-218(1)(2)
 - class 2 animals, 46-218(3)
 - other personal property, 46-219
- authority of department, 46-208(8)
- cases in which owner not entitled to indemnity, 46-228
- claims for indemnity, contents and formal requirements, presentation, 46-221
 - class 2 animals in state less than one hundred and twenty days, sources of funds for payment of indemnity, 46-222
 - compensation from federal government or other agency deducted from claim, 46-229
- examination and payment of claims, 46-224
- sources of funds for payment, 46-220

co-operation with United States department of agriculture, adoption of federal rules by department, 46-227

indemnity to owner authorized, 46-208(9)

other laws unaffected, 46-223

sale of condemned carcasses, disposition of proceeds, 46-226

Snowmobile, restrictions on use to drive livestock, 53-1020

State highways through high hazard areas of open range, fencing required, 32-2425.1 to 32-2429

Stolen livestock

- forfeiture of vehicles used in transporting, 94-35-204, redes. 46-3005
- sale, disposition of proceeds, 46-3006

Taxation—See TAXATION, Livestock

- levies for disease control and indemnification, predator control, inspection, protection, research and promotion, 1972 Const., XII, 1

Trespassing stock

- forest reserves, land in or adjoining to be marked, 46-1411
- claim for damage not allowed in absence of marking, 46-1413

Tuberculin, permission from department required for sale or distribution of, 46-301

daily report to department required, contents, 46-302

INDEX

References are to Title and Section numbers

LOANS

- Consumer loan act, 47-201 to 47-228—See CONSUMER LOAN ACT
- False or deceptive financial statement for purpose of procuring loan or credit as deceptive practice, punishment, 94-6-307
- Interest, legal rate, 47-124
 - maximum rate by agreement, 47-125
- Minors, capacity to borrow for education, 64-106
- Real estate loans by banks, limitation on, 5-506
- Secured Transactions chapter, laws unaffected by, 87A-9-201

LOBBYING

- Briefs or statements, depositing copies with secretary of state, when, 43-806
- Docket
 - appearance of name on docket before practice as a lobbyist, 43-806
 - definition, 43-802
 - name of lobbyist to be entered on, 43-804
 - preparation and keeping by secretary of state, 43-805
 - public record, inspection, 43-805
- License of lobbyist
 - application, 43-803
 - eligibility for, 43-803
 - expiration, 43-803
 - fee, 43-803
 - required, 43-806
 - suspension or revocation of license, 43-803
- "Lobbying" defined, 43-802
- Lobbying privileges, suspension, when, 43-803
- "Lobbyist" defined, 43-802
- "Pecuniary interest" defined, 43-802
- Persons not required to be licensed or registered, 43-807
- Principal
 - definition, 43-802
 - entering name of lobbyist on docket, duty, 43-804
- Purpose of act, 43-801
- Secretary of state
 - preparation and keeping of docket, 43-805
 - weekly report to legislature, 43-805
- "Unprofessional conduct" defined, 43-802
- Violations of act, penalty, 43-808
- Written authorization to act, filing by lobbyist, 43-805

LOCAL GOVERNMENT CODE

- Alternative forms of local government, 47A-3-201 to 47A-3-208
 - charter form, Const., XI, 51; 47A-3-208
 - provisions to be contained in charter, others not excluded, 47A-3-208
 - commission-chairman form, 47A-3-206
 - alternative structural characteristics to be submitted to electors, 47A-3-206 (3)
 - basic structure, alternative names, 47A-3-206 (1)
 - chairman or mayor, election, status, powers and duties, 47A-3-206 (2)
 - powers of local government, alternatives, 47A-3-206 (4)
 - commission-executive form, 47A-3-203
 - basic structure, 47A-3-203 (1)
 - commission, manner of election, 47A-3-203 (3) (g)
 - chairman, alternative methods of selection, term, 47A-3-203 (3) (i)
 - number of commissioners, terms, 47A-3-203 (3) (1)
 - terms of members, 47A-3-203 (3) (k)
 - community councils, 47A-3-203 (1)
 - elections, how conducted, 47A-3-203 (h)
 - executive, powers and duties, 47A-3-203 (2), (3)
 - voting rights, 47A-3-203 (j)

INDEX

References are to Title and Section numbers

LOCAL GOVERNMENT CODE (Continued)

Alternative forms of local government (Continued)

commission-executive form (Continued)

financial officer or treasurer, alternative methods of selection, 47A-3-203 (3)
(f)

other names permitted, 47A-3-203 (1)

powers of local government, alternatives, 47A-3-203 (4)

presiding officer of commission, alternatives, 47A-3-203 (3) (j)

commission form, 47A-3-205

alternative structural characteristics submitted to electors, 47A-3-205 (2)

county and consolidated local governments, 47A-3-205 (3)

basic structure, 47A-3-205 (1)

general government powers, 47A-3-205 (4)

officers, alternatives, 47A-3-205 (3)

commission-manager form, 47A-3-204

basic structure, 47A-3-204 (1)

employees, exclusive powers of manager, 47A-3-204 (4), (5)

manager appointed by commission, criteria, powers and duties, 47A-3-204
(2), (3)

powers of local government unit, alternatives, 47A-3-204 (7)

structural characteristics to be defined in plan submitted to electors, 47A-3-
204 (6)

counties, alternative forms of government, 16-5001 to 16-5019—See COUN-
TIES, Alternative forms of government

declaration of purpose, 47A-3-201 (1)

one alternative form to be adopted by each local government, 47A-3-202

procedure for adopting alternative form, 16-5101 to 16-5115.17—See LOCAL
GOVERNMENT STUDY COMMISSIONS

scope of chapter, 47A-3-201 (2)

town meeting form, 47A-3-207

agenda of meeting, contents, 47A-3-207 (4)

alternative structural characteristics submitted to electors, 47A-3-207 (9)

annual meeting, 47A-3-207

basic structure, 47A-3-207 (1)

cities or towns authorized to adopt town meeting form, 47A-3-207 (1)

legislative powers vested in town meeting, 47A-3-207 (2)

powers of local government, alternatives, 47A-3-207 (11)

special meetings, how called, business conducted, procedure, 47A-3-207 (3),
(4)

town chairman elected, term, compensation, powers and duties, 47A-3-207 (5)
to (9)

Powers of self-governing local governments, 47A-7-101 to 47A-7-204

exercise of any power not prohibited, Const., XI, 6; 47A-7-101

liberal construction of self-government powers, 47A-7-106

limitations on powers, 47A-7-201 to 47A-7-204

areas of state law in which exercise of power prohibited, 47A-7-204

consistency with state law and regulation required, 47A-7-203

delegation required for exercise of certain powers, 47A-7-202

powers specifically denied, 47A-7-201

ordinance or resolution of governing body required for exercise of power, 47A-
7-104

services and functions not expressly prohibited, 47A-7-102

general power government limitations not applicable, 47A-7-103

state statutes applicable until superseded by ordinance or resolution, 47A-7-105

LOCAL GOVERNMENT STUDY COMMISSIONS

Additional plans for consolidation or transfer of services and functions between
local governments, authority of study commissions, 16-5115.7

Advisory boards and committees, establishment authorized, 16-5112 (2)

Alternative form of government to be submitted to electors of local government
units, 16-5105, 16-5115.2

conduct of elections, 16-5115.10

submission at special election, time limit for, 16-5115.10

INDEX

References are to Title and Section numbers

LOCAL GOVERNMENT STUDY COMMISSIONS (Continued)

Alternative form of government (Continued)

- transition to approved alternative form, time limitations, effective date, 16-5115.11
 - offices and employees, effect on, 16-5115.12
- Commission for new form of government, organization meeting, terms, 16-5115.14
- Consolidation of county and city or town to form confederated unit, procedure, duties of study commissions, 16-5115.4
- Consolidation of county and city or town to form single unit, procedure, duties of study commissions, 16-5115.3
- Consultants, commissions may retain, 16-5112(3)
- Contracts and co-operation with other agencies authorized, 16-5112(4)
- Co-operation of study commissions authorized, separate action not precluded, 16-5106
- County consolidation, procedure, duties of study commissions, 16-5115.5
 - municipalities included in consolidation, 16-5115.6
- Definition of terms, 16-5102
- Disincorporation of city or town, submission of proposal by study commission, 16-5115.8
- Employment of staff by commissions, 16-5112
 - public employees as consultants, compensation and expense, 16-5112(1)
- Existing forms of local government, laws applicable after May 2, 1977, 16-5115.1
 - commission-manager form, 16-5115.1 (2)
 - county-manager form, 16-5115.1 (4)
 - elected county official form, 16-5115.1 (3)
 - mayor-council form, 16-5115.1 (1)
- Financing of study commissions, 16-5113
 - annual budgets, 16-5113(1)(2)
 - appropriated funds accepted and transferred to study commissions by local government units, 16-5113 (3)
 - deposit and disbursement of budgeted funds, 16-5113(5)
 - supplementation of available state funds by local government units, tax levy authorized, 16-5113(4)
 - unexpended balances, disposition, 16-5113(5)
- Judicial enforcement and review, 16-5115.15
- Legislative declaration of policy and purpose, 16-5101
- Liberal construction, 16-5115.17
- Meetings of commissioners to be open to the public, 16-5111
- New officials, manner of electing, 16-5115.13
- Organization meeting set by county commissioners, business to be conducted, 16-5109(1)(2)
 - calling of meetings, procedure, notice required, 16-5109(3)
 - quorum at meeting, majority of whole number of commissioners required for effective action, 16-5109(5)
 - record of proceedings to be maintained, 16-5109(4)
- Other laws, provisions unaffected by, 16-5115.16
- Other proceedings for adoption of charter or form of government prohibited, 16-5114
- Powers of commission generally, 16-5105, 16-5112(5)
- Record of proceedings and finances open to public inspection, 16-5109(4)
- Rules for organization and procedure, adoption by commissions authorized, 16-5109(6)
- Severability of provisions, 16-5115
- Study commissioners elected by qualified electors of local government unit, nominations, 16-5107
 - appointment of members, when authorized, 16-5107(11)
 - compensation and expenses of commissioners, 16-5110
 - number of commissioners, 16-5103, 16-5107
 - procedure for nomination and election of commissioners, 16-5107
- Study commissions to be established in counties and municipalities by resolution of governing bodies, 16-5103
 - constitutional authority, 1972 Const. XI, 3, 5, 6 and 9; 16-5101
 - powers of commissions generally, 16-5105
 - administrative powers, 16-5112
 - purpose of commissions, 16-5104
 - resolutions not subject to referenda or initiative petitions, 16-5103

INDEX

References are to Title and Section numbers

LOCAL GOVERNMENT STUDY COMMISSIONS (Continued)

Study commissions to be established (Continued)

“study commission” defined, 16-5102

time limitation for adoption of resolution, 16-5103

Temporary commission on local government established, 16-5116

advisory board and committees, establishment authorized, 16-5119(11)

compensation and expenses of members, 16-5119(4)

constitutional authority, 1972 Const. VI, 7; 16-5116

consultation with local government study commissions authorized, 16-5118(2)

co-operation of state agencies of units of local government required, 16-5119(9)

employment of personnel authorized, 16-5119(3)

financing of commission, 16-5120

meetings open to public, 16-5119(6)

members of commission, number, appointment, qualifications, terms, filling of vacancies, 16-5117

officers, selection by commission, 16-5119

powers of commission generally, 16-5118, 16-5119(12)

public employees as consultants to commission, compensation, expense, 16-5119(10)

public hearings and other methods for dissemination of information and stimulation of public interest authorized, 16-5119(6)

purpose and responsibility of commission generally, 16-5118

quorum for transaction of business, 16-5119

recommendation of commission ineffective unless adopted by majority of whole number of members, 16-5119(5)

record of proceedings required, open to public inspection, 16-5119(8)

reports required of commission, time for, 16-5118(3) (4)

rules for organization and procedures for commission, adoption authorized, 16-5119

scheduling of meetings, notice to be given, 16-5119(7)

severability of provisions, 16-5121

Termination of existence of study commissions, 16-5108

Time limits for performance of functions by local study commissions, 16-5115.9

LONG-TERM CARE FACILITIES

Alteration of facilities, approval of department required, 69-5212

Confidential nature of information received by department, 69-5218

Construction, expansion, remodeling or alteration of facility, approval of department required, 69-5212

Freedom of choice of physician protected, 69-5217

“Hospital-related facility” defined, 69-5201(2)—See HOSPITALS AND RELATED FACILITIES

Injunction for protection of health and welfare, 69-5220

License required for operation of facility, 69-5203

application for license, procedure, 69-5205

definition of terms, 69-5201

denial of license, grounds, 69-5207

procedure for denial, 69-5210

federal facilities exempt from requirement, 69-5202

fees for license, 69-5204

inspection of facility and issuance of license, 69-5206

records and reports required of facilities, 69-5219

revocation or refusal to renew license, grounds, 69-5208

procedure for revocation or refusal, 69-5210

rules and standards for facilities, scope and publication by department, 69-5213

“Long-term care facility” defined, 69-5201 (2) (d)

Malpractice, limitation of actions, 93-2624

Penalty for violations of licensing chapter, 69-5221

LOTTERIES

Agricultural fairs or rodeo associations, drawings exempt, 94-8-302

Aiding lottery as misdemeanor, 94-8-305

Definition, 94-8-301

Drawing lottery as misdemeanor, 94-8-303

INDEX

References are to Title and Section numbers

LOTTERIES (Continued)

- Forfeiture of moneys or property offered in lottery, procedure, 94-8-308
- Gambling, 94-8-401 to 94-8-431—See GAMBLING
- Insuring tickets as misdemeanor, 94-8-307
- Letting or permitting use of building for lottery as misdemeanor, 94-8-309
- Office, opening or advertising lottery office as misdemeanor, 94-8-306
- Out-of-state drawings, law applicable to, 94-8-310
- Prohibition against lotteries unless authorized by legislature or by people, 1972 Const., III, 9
- Publishing offer to insure tickets as misdemeanor, 94-8-307
- Punishment, 94-8-311
- Selling tickets as misdemeanor, 94-8-304

M

MACHINE GUNS

See FIREARMS

- Registration functions transferred to department of law enforcement, 82A-1203

MACHINERY

- Obscuring serial number or identification mark as criminal offense, punishment, 94-6-311

MALICIOUS MISCHIEF

See CRIMINAL MISCHIEF

MALPRACTICE

- Emergency care at scene of accident, restriction on liability for, 17-410
- Insurance coverage, restrictions on cancellation or increase of premiums, 40-4413, 40-4414
- Limitation of actions for medical malpractice, 93-2624

MANAGEMENT OF INSTITUTIONAL FUNDS

- Citation of act, 86-809
- Definition of terms, 86-801
- Endowment funds, appropriation and expenditure of appreciated value, 86-802
 - ordinary business care and prudence required, 86-806
 - prohibited when contrary to donor's intention, 86-803
 - terms from which donor's intention not implied, 86-803
- "Institution" defined, 86-801
- Investments allowable, 86-804
 - delegation of investment authority, compensation for advisory or management services, 86-805
 - ordinary business care and prudence required, 86-806
- Release of restrictions in gift instrument, 86-807
 - consent of donor, 86-807 (1)
 - cy pres doctrine, application not limited, 86-807 (4)
 - judicial release, limitations, 86-807 (2)
 - limitations upon use of fund following release, 86-807 (3)
- Uniformity of construction, 86-808

MANDAMUS

- Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
- Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

MANSLAUGHTER

See HOMICIDE

MARRIAGE AND DIVORCE

See also HUSBAND AND WIFE

- Actions, married persons as parties, 93-2803, 93-2804

INDEX

References are to Title and Section numbers

MARRIAGE AND DIVORCE (Continued)

Annulment of marriage—See Declaration of invalidity, below

Application for marriage license, contents, 48-305

county in which application made, 48-146

nonresident applicants, 48-146

form of application, 48-144

forms prescribed by director, 48-305 (2)

Breach of promise

acts within state not to give rise to cause of action, 17-1203

cause of action abolished, 17-1202

litigation and threat of litigation prohibited, 17-1204

penalty for bringing action, 17-1206

settlements and compromises void, 17-1205

Certificate of marriage, report to registrar of vital statistics, 69-4432

Child custody proceedings, 48-331 to 48-341

application of act, pending actions and proceedings, 48-341

best interest of child as basis for determination, factors considered, 48-332

commencement of proceeding, 48-331 (4)

hearings on custody, priority on docket, when public excluded, 48-336

intervention of parties on order of court, 48-331 (5)

interview of child by court in chambers, 48-334 (1)

investigation and report of custodial arrangements, copy of report and investigator's file made available to counsel, 48-335

judicial supervision over custodian, 48-338

jurisdiction of court, 48-331

modification of custody decree, time limitation, requirements, 48-339

procedure, 48-340

notice to parent, guardian, and custodian required, 48-331 (5)

professional personnel, court authority to seek advice of, formal requirements, 48-334 (2)

responsive pleading, filing, 48-331 (5)

temporary custody order, bases, termination, procedure, 48-333

procedure, 48-340

visitation rights of parent, when restricted, 48-337

Common-law marriage not invalidated, 48-314

Conciliation of controversies, 36-201 to 36-205—See HUSBAND AND WIFE, Conciliation of controversies

Declaration of invalidity of marriage, 48-311

children born of invalid marriage legitimate, 48-311 (4)

circumstances under which decree entered, 48-311 (1)

conciliation petition filed, stay of proceedings after, 36-204

effective date of decree, 48-311 (5)

not invalidated, 48-314

persons who may seek declaration, 48-311 (3)

registrar of vital statistics, report to, 69-4433

judicial information included in report, 69-4434

surviving spouse, effect on succession rights, 91A-2-802

time limitations, 48-311 (2)

will revoked by declaration, 91A-2-508

Declaration of marriage without solemnization

drafting of declaration, persons authorized, 48-130.1

penalty for violation of act, 48-130.2

Dissolution of marriage or legal separation, grounds for entry of decree for, 48-316

attorneys' fees and costs, order of court for payment of, 48-327

child custody, 48-331 to 48-339—See Child custody proceedings, above

child support, factors considered by court, 48-323

assignment of earnings or income ordered by court, 48-326

attorney, appointment for child authorized, allowance of costs and fees, 48-324

failure of party to comply with order, obligation of other party not suspended, motion for relief, 48-329

modification of order, 48-330 (1), (3)

payment of support into court, authority of court to order, 48-325

termination of obligation, 48-330 (3)

INDEX

References are to Title and Section numbers

MARRIAGE AND DIVORCE (Continued)

Dissolution of marriage or legal separation (Continued)

- decree of dissolution or legal separation final when entered, appeal, 48-328 (1)
- failure of party to comply, obligation of other party not suspended, motion for relief, 48-329
- legal separation decree converted to dissolution of marriage, time for, 48-328 (2)
- notice of entry of decree given by clerk, 48-328 (3)
- remarriage after entry of decree authorized, 48-328 (1)
- findings required of court, 48-316
- initiation of proceedings by either party to marriage, 48-317 (3)
- irretrievable breakdown admitted, not contested, nor denied, duty of court, 48-319
- conciliation law unaffected, 48-319(4)—See HUSBAND AND WIFE, Conciliation of controversies
- finding of irretrievable breakdown, effect, 48-319 (3)
- joinder of parties by court, 48-317 (6)
- maiden name of wife restored upon request, when, 48-328 (4)
- maintenance order for either spouse authorized, amount, findings required, 48-322
 - assignment of earnings or income by order of court, 48-326
 - failure of party to comply, obligation of other party not suspended, motion for relief, 48-329
 - modification of decree, 48-330
 - payment of maintenance into court, authority of court to order, 48-325
 - separate proceedings for maintenance following dissolution of marriage, 48-321, 48-322
 - termination of maintenance obligation, 48-330 (2)
- petition, formal requirements, contents, 48-317 (2)
- property, disposition of, 48-320, 48-321
 - agreement of parties, disposition by, 48-320
 - children of parties, property set aside for, 48-321 (2)
 - equitable apportionment by court, matters considered, 48-321 (1)
 - revocation or modification prohibited, exception, 48-330 (1)
- responsive pleading, time of filing, 48-317 (4)
 - previously existing defenses abolished, 48-317
- rules of civil procedure applicable, 48-315, 48-317
- service of process, 48-317 (4)
- surviving spouse, effect on succession rights, 91A-2-802
- temporary orders pending proceedings, 48-318
 - bases for issuance of orders, 48-318 (5)
 - effect of temporary order, 48-318 (6)
 - injunction or restraining order, relief afforded by, 48-318 (2)
 - maintenance, 48-318 (1)
 - restraining order without notice, when issued, 48-318 (3), (4)
 - support of child, 48-318 (1)
 - termination upon entry of final decree, 48-318 (6) (c)
- will revoked by dissolution, 91A-2-508

Incestuous marriage as criminal offense, punishment, 94-5-606

License to marry, issuance, fee, 48-306

- applicant under influence of liquor or drug, license not to be issued, 48-147
- application for license, form, 48-144
- county in which license must be obtained, 48-146
- effective date, 48-307
- nonresident applicants, place of issuance of license, 48-146
- persons under age, issuance on order of court, 48-308
- proof required, 48-306
- required for marriage, 48-146
- support obligation, license not issued to persons delinquent, 48-148

Marriage as personal relationship arising out of civil contract, 48-304

Married minors' consent to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS

Prior marriage contract validated, 48-313

INDEX

References are to Title and Section numbers

MARRIAGE AND DIVORCE (Continued)

Prohibited marriages, 48-310

Proof of age before issuance of license, 48-134

Proof of solemnization of marriage

acknowledgment and recording of declaration of marriage, 48-132

contents of written declaration, 48-131

method of proof when no record exists, 48-131

official record of marriage, 48-132

Purposes of act, 48-302

Putative spouse, status recognized, termination, equitable apportionment of property, 48-312

Rules of civil procedure applicable in all proceedings, 48-315

"decree" includes "judgment," 48-315 (4)

denomination of pleadings generally, 48-315 (3)

effect of decree, 48-315 (5)

petition as initial pleading, 48-315 (3)

title and style of proceedings, 48-315 (2)

Short title, 48-301

Solemnization and registration of marriage, 48-309

certificate completed and forwarded to clerk of court, 48-309 (1)

person solemnizing marriage not legally qualified, validity of marriage, 48-309 (4)

proxy, solemnization by, 48-308 (3), 48-309 (2)

registration of marriage by clerk of court, 48-309 (3)

Uniformity of application and construction, 48-303

Validity of marriage dependent upon compliance with provisions of act, 48-304

MARSHAL

See PEACE OFFICERS

MASSEURS

Board of massage therapists

administrative services provided by department, 82A-1603

allocation to department for administrative purposes, 82A-1602

appointment, qualifications and terms of members, 82A-1602.14

bond of treasurer, 66-2911

compensation and expenses of members, 66-2910

continuation in office of board members, 82A-1606

dismissal and replacement of board members, 66-2911

employment of personnel for board, 82A-1604

existence and composition of board, 82A-1602.14

legal assistance in hearings by board, 82A-1604

meetings of board, 66-2904

organization of board, 66-2904

powers and duties, 66-2904, 82A-1605

retention of functions by board, 82A-1605

Definitions, 66-2902

Exemptions, 66-2914

Licenses required for practice of massage, 66-2905

application for license, 66-2906

examination for licenses, 66-2907

fees for licenses, 66-2906

disposition of funds, 66-2910

receipts and disbursements out of fund, 66-2910

foreign practitioners, admission to practice, 66-2912

refusal of license, 66-2908

renewal of license, 66-2909

revocation or suspension of license, grounds, 66-2908

temporary permits to license applicants, 66-2905

Penalty for violation of act, 66-2913

Purpose of regulatory act, 66-2901

MASTERS

Appointment and compensation by district court, M. R. Civ. P., Rule 53(a)

INDEX

References are to Title and Section numbers

MASTERS (Continued)

Findings of master, adoption by court, M. R. Civ. P., Rule 52(a)
Powers of master, M. R. Civ. P., Rule 53(c)
Pre-trial conference, consideration of reference to master, M. R. Civ. P., Rule 16
Proceedings before masters, M. R. Civ. P., Rule 53(d)
Reference to master, M. R. Civ. P., Rule 53(b)
Report of master, M. R. Civ. P., Rule 53(e)
Statement of accounts submitted to master, M. R. Civ. P., Rule 53(d)
Witnesses before masters, M. R. Civ. P., Rule 53(d)

MATTRESSES

Shoddy control, 69-4701 to 69-4707—See SHODDY

MAUSOLEUMS AND COLUMBARIUMS

Limitation of action against mausoleum-columbarium authority, 9-604
Merchandise trust fund, deposit of moneys in, 9-921
Mortician exempt in damages for remains delivered to authority, 9-604

MEAT

Imported meat, labeling required, 27-318
 legislative findings, 27-320
 purpose of law, 27-320
 supplier to furnish information, 27-318
 violation as misdemeanor, penalty, 27-319
Markets, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
Processing and other facilities, supervision, inspection and control by department of livestock, 46-208(5)—See LIVESTOCK, Sanitary conditions

MENTAL HEALTH CENTERS

Community mental health centers, 80-2801 to 80-2806
 availability of services without discrimination, 80-2806
 “community comprehensive mental health center” defined, services offered, 80-2801
 contracts with regional mental health corporations authorized, purposes, 80-2803 (1)
 definition of terms, 80-2801
 department of institutions, powers and duties, 80-2802
 existing mental health services or facilities unaffected, 80-2805
 funding of program, 80-2803 (2)
 fees used to implement budget, 80-2804 (6)
 transfer of appropriated funds from Warm Springs state hospital, when authorized, 80-2803 (2)
 mental health regions established in state mental health plan, 80-2804 (1)
 annual budget submitted to board of county commissioners, when tax levy authorized, 80-2804 (5)
 board, appointment of members, terms, duties, 80-2804 (2), (3)
 conformity to state plan required, 80-2804 (1)
 contracts with department authorized, purpose, 80-2804 (2)
 eligibility under employees’ retirement system, 80-2804 (2)
 expenses of board members, reimbursement, 80-2804 (4)
 fees for mental health services established by board, approval of department required, 80-2804 (6)
 incorporation of regions, law applicable, 80-2804 (2)
 not considered departments or agencies of department or state, 80-2804 (2)
Programs administered by department of institutions, 82A-801.1

MENTALLY ILL PERSONS

Boulder river school and hospital, functions, 80-2604
Defense in criminal proceedings, 95-501 to 95-509—See CRIMINAL PROCEDURE, Competency of accused
Department of institutions to administer law, 82A-801.1
Discharge of indigent persons, notice to county welfare department, duties, 38-110
Interstate compact on mental health enacted, text, 80-2412

INDEX

References are to Title and Section numbers

MENTALLY ILL PERSONS (Continued)

- Moneys of person committed, custody and disposition, 38-210
- Nonresident mentally ill person received into state hospital pending return to state of residence, duration, 38-120
- Representation in actions by and against mentally ill person, M. R. Civ. P., Rule 17(c)
- Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
- Seriously mentally ill persons, 38-1301 to 38-1331
 - care and treatment following release, 38-1326
 - children and young adults, special provisions for, 38-1327
 - definition of terms, 38-1302
 - emergency situation, temporary detention authorized, 38-1307
 - arrangement with other jurisdictions for detention authorized, 38-1307 (5)
 - duties of peace officer, 38-1307 (1)
 - evaluation and treatment period ordered, maximum length, 38-1307 (3)
 - jail or correctional facility as place of detention, when authorized, 38-1307 (4)
 - petition alleging serious mental illness, filing, procedure, 38-1307 (2), (3)
 - examination of patient following commitment, when release required, 38-1325
 - mental disabilities board of visitors created, appointment of members, duties, 38-1330
 - outpatient care ordered as condition for early release of committed person, 38-1308
 - limit of period of outpatient care, 38-1308 (1)
 - modification of conditions authorized, 38-1308 (2)
 - order for return to facility, when authorized, 38-1308 (3)
 - release from outpatient care, notice to court, 38-1308 (4)
 - persons currently adjudged mentally ill, effect of act on, 38-1312
 - petition alleging person to be seriously mentally ill, contents, procedure, 38-1305, 38-1307 (2), (3)
 - choice of professional person, 38-1305 (8)
 - inpatient evaluation and treatment recommended, hearing, procedure, 38-1305 (5) to (7)
 - release of person not requiring evaluation and treatment, 38-1305 (8)
 - petition of professional person for commitment to mental health facility, contents and accompanying documents, 38-1306
 - discharge of patient, 38-1306 (5)
 - extension of commitment period, 38-1306 (6), (7)
 - hearing on petition, procedure, 38-1306 (4), (5)
 - maximum period of commitment, extension, 38-1306 (5), (6)
 - order of court, alternatives, criteria for selection, 38-1306 (5)
 - outpatient care and therapy ordered by court, 38-1306 (8)
 - waiver of trial and consent to commitment, formal requirements, 38-1306 (3)
 - professional persons and staff members to meet qualifications, 38-1323
 - purpose of act, 38-1301
 - records to be maintained by mental health facility, 38-1328
 - confidentiality of records, exceptions, 38-1329
 - release of committed person, 38-1306, 38-1308
 - conditional release for outpatient care, 38-1308
 - order of court, 38-1306 (5)
 - transitional care and treatment following release, 38-1326
 - rights of person alleged to be seriously mentally ill, 38-1309, 38-1313, 38-1317 to 38-1322
 - admitted to facility, rights of patient, 38-1317 to 38-1322
 - appeal to supreme court, right of respondent, 38-1309 (4), 38-1311
 - civil and legal rights of person committed, 38-1313
 - counsel employed for indigent respondent, 38-1309 (1)
 - examination by professional person of own choice, 38-1309 (2)
 - experimental research prohibited without informed consent, restrictions, 38-1321
 - fingerprinting prohibited, exception, 38-1315
 - isolation of patient prohibited, exception, 38-1320

INDEX

References are to Title and Section numbers

MENTALLY ILL PERSONS (Continued)

Seriously mentally ill persons (Continued)

rights of person (Continued)

patient labor, rules, 38-1318

photographing committed person, purposes for which permitted, confidentiality, 38-1316

physical restraint prohibited, exception, 38-1320

presence at any hearing or trial, right of subject, 38-1309

specific rights of patient in facility, 38-1317

unnecessary or excessive medication prohibited, review, 38-1319

unusual or hazardous treatment prohibited without informed consent, 38-1322

rights of persons being involuntarily detained, examined or subjected to hearing, 38-1304

constitutional rights, subject to be informed of, 38-1304 (1)

waiver, rights subject to, 38-1304 (1), (2)

"seriously mentally ill" defined, 38-1302 (13)

standards for treatment to be known to patient and interested persons, 38-1331

transfer to mental health facility prohibited except in accordance with act, 38-1310

treatment plan for each patient in facility to be established, 38-1324

voluntary admission to mental health facility, application, procedure, 38-1303

"mental health facility" defined, 38-1302

minors, voluntary or involuntary commitment, 38-1303 (7) to (9)

Montana state hospital, voluntary application for admission to, requirements, 38-1303 (2)

Service of process on persons of unsound mind, M. R. Civ. P., Rule 4D (2)

Terminology used in law, change, 38-121

METROPOLITAN SANITARY AND STORM SEWERS

Boundary changes in districts, 16-4414

Distance from which pollution is presumed, 16-4415

Operation and maintenance

budget

filed with county clerk, 16-4416.2

laws governing, 16-4416.3

public hearing on levy, notice, 16-4416.1

records of collections and expenditures, 16-4416.4

Rates, charges and rentals, establishment, 16-4416

Reserve fund, establishment, maintenance and use, 16-4417

System of rates and charges for proportional distribution of costs authorized, 16-4412

Validation of previous proceedings, 16-4418

MIDWIVES

Qualifications and requirements for practice, 66-1246—See NURSES, Midwives

MILEAGE

See PUBLIC OFFICERS AND EMPLOYEES, Mileage allowance

MILITIA AND MILITARY

Actions against members of organized militia for act done or omitted in discharge of duty, attorney general to defend, 77-2101

employment of private counsel by defendant authorized, 77-2101

Adjutant general, head of department of military affairs, qualifications, 82A-1401, 82A-1405

Armories, 77-2006, 77-2007

county, city or town participating in building of armory, 77-2006

lease of real property by department authorized, 77-2007

Arrest, members privileged from, 95-616

Call of state forces, when authorized, 1972 Const., VI, 13

Civilian control, 1972 Const., II, 32

Commanding officer at drill, parade encampment or other duty, authority, 77-2105

arrest of trespassers and persons disturbing military operation, 77-2106

INDEX

References are to Title and Section numbers

MILITIA AND MILITARY (Continued)

Composition of state forces, 1972 Const., VI, 13; 77-1601, 77-1602

Department of military affairs created, 82A-1401

adjutant general as head of department, 82A-1401

assistant adjutant generals, appointment, qualifications, rank, 82A-1406

rank, qualifications, salary, 82A-1405

powers and duties of department, 77-1606

Discharge certificates, recording without charge, 16-2927

Dissuading person from enlisting by threatening injury to business, employment or trade as misdemeanor, 77-2103

Employment denied because of organized militia membership as misdemeanor, 77-2103(1)

Enlisted members, terms, oath, retirement, 77-1801 to 77-1804

extension of terms of service, 77-1803

Federal installations and facilities donated, acceptance by board of examiners, 81-1101.1

Federal laws and regulations as governing state military forces, 77-1603

Governor as commander-in-chief, 1972 Const., VI, 13

calls of state forces, when authorized, 1972 Const., VI, 13

martial rule, authority of governor to proclaim, 77-1605

rules prescribed by governor, 77-1604

Home guard as component of organized militia, 77-1602

armories and equipment made available to guard, 77-2203

organization and composition, 77-2201

pay, allowances, pensions, benefits, 77-2204

rules conforming to federal law and regulations prescribed by governor, 77-2202

Importation of armed persons or forces prohibited, exception, 1972 Const., II, 33

Martial rule, proclamation by governor, 77-1605

Military courts, composition, jurisdiction, powers and procedures, 77-1901

application of federal law and regulation, 77-1901

civil officers' services, fees, records, 77-1907

confinement in municipal or county jail of persons committed by court, 77-1905

convening of court outside state, jurisdiction, 77-1903

persons subject to military court jurisdiction, 77-1902

process, persons authorized to execute, 77-1904

reporter, compensation, 77-1906

surrender of accused to civil authority, when authorized, 77-1908

territorial jurisdiction, 77-1903

witnesses, fees, 77-1906

Military property, unlawful sale or detention as misdemeanor, 77-2107

"Militia" defined, 77-1601

National guard

component of organized militia, 77-1602

definition, 77-1601

employees members of public employees' retirement system, 68-2510

vehicles of guardsmen, distinctive plates authorized, 53-106.7

Obstructing trade, business or employment, because of organized militia membership as misdemeanor, 77-2103

Officers of militia, appointment, qualifications, tenure, 77-1701

commissions or warrants, when vacated, 77-1705

examination as to fitness to serve, 77-1706

oath required of officers, 77-1702

resignation, acceptance by governor required, 77-1704

retirement by order of governor, reasons, 77-1703

uniforms, allowance, 77-1707

vacating civil office or position not required, 77-1708

Organized militia as consisting of national guard and Montana home guard, 77-1602

Pay, allowances and expenses of personnel called into active duty, 77-2002 to 77-2004

commanding officer, incidental expense allowance, 77-2004

enlisted members, 77-2003(2)

officers, 77-2003(1)

warrants drawn on general fund, 77-2002

Pensions, 77-2005

INDEX

References are to Title and Section numbers

MILITIA AND MILITARY (Continued)

- Post-attack continuity in government, resource management—See WAR
- Property issued for organized militia remains public property, 77-2001
- Public employees attending training camp or program, leave of absence with pay authorized, 77-2104
- Quartering of soldiers in houses prohibited, 1972 Const., II, 32
- Servicemen, servicewomen, and veterans, special treatment, 1972 Const., II, 35
- Streets and highways in use by military, right of way to be yielded, exceptions, violation as misdemeanor, 77-2102
- Trespassers on military property and persons disturbing operations as guilty of misdemeanor, arrest, 77-2106
- Uniform, unlawful wearing as misdemeanor, 77-2108
- Unorganized militia, composition, 77-1602
- Vietnam servicemen, honorarium or adjusted compensation granted, 77-2501 to 77-2511
—See VETERANS, Vietnam veterans

MILK CONTROL BOARD

See DAIRIES AND DAIRY PRODUCTS

MINES AND MINING

Coal mining

- abandonment of established passageway to escape outlet, immediate notice to division required, 50-477
- accidental closing of established passageway to escape outlet, immediate notice to division required, 50-477
- accidents involving serious or fatal injury to person, immediate notice to division required, 50-477
 - duties of division, 50-478
 - notice to miners' organization, investigation, 50-478(4)
- boards of examiners, abolition and transfer of functions, 82A-1005
- boundaries, workings not to approach nearer than fifty feet to boundary line of coal rights, exception, 50-434.1
- citation of chapter, 50-401
- definition of terms, 50-401.1
- division of workers' compensation
 - accident involving serious or fatal injury to person, duties of division, 50-478
 - coal mine inspectors, appointment, qualifications, 50-402, 50-403
 - hoisting engineers, licensing of, 50-479
 - inspections and investigations, 50-480 to 50-480.8—See inspections and investigations by division, below
 - powers and duties, 50-404
 - rules, power to adopt, 50-412.1
 - statement of mine conditions following inspection, contents, posting, 50-407
- firedamp in mine, immediate notice to division required, 50-477
- gas or water accumulation, immediate notice to division required, 50-477
- inspections and investigations by division, 50-480 to 50-480.8
 - areas of imminent danger, exclusion of certain persons pending elimination of, 50-480.2
 - authority of division, purpose, 50-480
 - entry of mine authorized, 50-480.1
 - findings and orders of division, contents, formal requirements, notice to operator, 50-480.4
 - hearing on order by division, relief afforded, 50-480.6 to 50-480.8
 - imminent danger area or condition, control and elimination by division, 50-480.2
 - preventive civil relief for violation afforded, 50-481
 - review of division order, 50-480.5
 - severability of provisions, 50-482
 - standards violated, correction by division, 50-480.3
 - violation as misdemeanor, penalty, 50-481
- internal-combustion engines or machinery giving off noxious fumes not permitted underground, 50-467.1

INDEX

References are to Title and Section numbers

MINES AND MINING (Continued)

Coal mining (Continued)

- maps of mines to be furnished division, copying prohibited without consent of operator or owner, 50-432
- extensions required annually, 50-433(2)
- failure of owner or operator to furnish map or plan of mine, division to make, expense recoverable, 50-433
- production data, monthly report to division required, 50-477
- reports of operator to division, time for, contents, 50-477
- safety precautions, prohibited acts, 50-476
- serious fire, immediate notice to division required, 50-477
- sinking of shaft, slope or drift, immediate notice to division required, 50-477
- state inspectors appointed, 50-402
 - conflicts of interest prohibited, 50-405
 - qualifications, 50-403
- water or gas accumulation, immediate notice to division required, 50-477
- Eminent domain not available for strip or open pit mining, 93-9902, 93-9902.1
- False mining claims, filing prohibited, punishment, 50-702.1
- Large-scale coal development and coal-using energy complexes, assistance to local governmental units affected by, 50-1801 to 50-1810
 - accounts established within earmarked revenue fund, 50-1802
 - coal area highway improvement account, 50-1802 (2)
 - disposition of interest on unexpended balance, 50-1810
 - local impact and education trust fund account, 50-1802 (1)
 - area highway reconstruction program, purpose, appropriation and use of funds, 50-1803
 - department of highways, duties, 50-1803
 - restrictions on use of funds, 50-1803 (4)
 - cities, towns, counties, districts and other governmental units as eligible applicants, 50-1809
 - coal board established, composition, appointment, qualifications and residence of members, 50-1804
 - allocated to department of community affairs for administrative purposes, 50-1804 (2)
 - chairman, election, 50-1805
 - compensation of members, 50-1805
 - general powers of board, 50-1806
 - impact grants, duties, 50-1806
 - meetings of board, frequency, 50-1805
 - office facilities and staff provided by department, 50-1808
 - impact grants awarded by board, 50-1806
 - amount of grant, 50-1806 (4)
 - application for grant, form, contents, 50-1809
 - basis for award of grant, 50-1806 (4)
 - eligible applicants for grants, 50-1809
 - guidelines formulated by board, 50-1806 (4)
 - priorities for grants, 50-1807
 - purpose of grants, 50-1806 (4)
 - purpose of law, 50-1801
- Notice to landowner required before commencement of surface operations, 50-1303
 - approval by landowner required, 50-1303
 - ascertainment of ownership and possessory right required, 50-1302
 - discovery pits on federal lands exempt, 50-1304
 - immunity of landowner for personal injuries, 50-1306
 - prospecting permit or lease by mineral owner, exemption for, 50-1305
 - short title of act, 50-1301
 - violation as misdemeanor, 50-1306
- Open cut mining of bentonite, clay, scoria, phosphate, rock, sand and gravel, 50-1501 to 50-1517
 - bond required of operator; terms, deposit in lieu of bond, substitution of sureties, forfeiture, release, 50-1508, 50-1509, 50-1510
 - reclamation by commission upon forfeiture of bond, 50-1509, 50-1514
 - state, counties, and cities or towns exempt, 50-1516.1

INDEX

References are to Title and Section numbers

MINES AND MINING (Continued)

Open cut mining (Continued)

- commission authorized to do reclamation work, 50-1509, 50-1511
 - contracts for reclamation of open cut mining lands authorized, 50-1503
 - enforcement of contract by board, 50-1503
 - definition of terms, 50-1504
 - exemption of operations covered by other law, 50-1516
 - federal lands, exemption of operations on, 50-1517
 - federal, state or other funds, receipt and expenditure by commission authorized, 50-1511
 - fee and bond requirements, exemption of state, counties, cities or towns, 50-1516.1
 - hearing of aggrieved persons by commission, procedure, 50-1515
 - inspection by commission of mining operation, access to lands, 50-1512
 - minerals and substances covered by act, 50-1504(2)(4)
 - "open cut mining" defined, 50-1504
 - policy of state, 50-1502
 - reclamation contract with commission required of large open cut mining operators, 50-1507
 - amendment of contract to cover additional land, adjustment of fee, 50-1508
 - application for contract, contents, 50-1508
 - bond or security to accompany application, 50-1508
 - effective when signed, duration, 50-1510
 - fee to accompany application, 50-1508
 - issuance of contract by commission, 50-1508
 - operation without contract as misdemeanor, penalty, 50-1513
 - plan of operation to be submitted, 50-1508
 - public record open to inspection, 50-1510
 - requirements of contract, 50-1510
 - withdrawal of land from contract, adjustment of bond penalty, 50-1508
 - reclamation plan to be submitted by operator, requirements for commission approval, 50-1510
 - new or amended plan, submission to and approval by commission, 50-1510
 - operator failing to observe plan, order to cease mining, 50-1510
 - short title, 50-1501
 - state board of land commissioners to administer law, 50-1505
 - delegation of powers, duties and functions authorized, 50-1505
 - powers, duties and functions of commission, 50-1506
- Pneumoconiosis as occupational disease, definitions, 92-1303, 92-1315.1—See OCCUPATIONAL DISEASE ACT, Pneumoconiosis**
- Real estate brokers' act inapplicable to dealings in mineral interest, 66-1926**
- Reclamation of mining lands**
- administration by board of land commissioners, 50-1204
 - Administrative Procedure Act applicable for hearings and appeal, 50-1216
 - persons adversely affected as parties, 50-1216
 - annual report by permittee, 50-1212
 - bond or deposit required of permittee, terms and conditions, 50-1211
 - developer to furnish bond, 50-1207
 - civil penalties for violation, 50-1222
 - confidentiality of material obtained from applications and from small miners, 50-1221
 - admissibility of material in evidence, 50-1221
 - certain information available to public, 50-1221
 - existing files, review, segregation for public inspection, 50-1221.1
 - release of confidentiality by waiver, formal requirements, 50-1221.2
 - violation, punishment, 50-1221
 - co-operation with governmental and private agencies, 50-1206
 - deficiencies in reclamation activities, notice and rectification, 50-1213
 - definition of terms, 50-1203
 - denial of permit, grounds for, 50-1214
 - resubmission with different reclamation plan, 50-1215
 - development permit required, procedure and requirements, 50-1207
 - performance bond, 50-1211

INDEX

References are to Title and Section numbers

MINES AND MINING (Continued)

- Reclamation of mining lands (Continued)
 - employment of personnel for administration of act, 50-1204
 - exploration license required, procedure and requirements, 50-1207
 - federal lands, exemption of operations on, 50-1203
 - grants and funds, acceptance and use, 50-1206
 - information activities of board, 50-1205
 - confidential information not to be disclosed, 50-1221
 - injunctive relief against violation authorized, 50-1222
 - inspection of permit areas to determine compliance, 50-1213
 - legislative findings, 50-1201
 - notice of noncompliance, service on licensee or permittee, contents, suspension of permits, 50-1225
 - operating permit required, procedure and requirements, 50-1208
 - inspection of mining site and issuance of permit, 50-1210
 - penalties for violations, 50-1222
 - confidential information, unauthorized disclosure, 50-1221
 - small mine owners and operators, violations by, 50-1220
 - plan of reclamation, required contents, 50-1209
 - modification of plan, 50-1210
 - previously performed work exempt, 50-1219
 - prior permits and licenses to remain in effect, 50-1226
 - purposes of act, 50-1202
 - research and experimental activities, 50-1205
 - rules and regulations, 50-1204
 - sample collectors exempt, 50-1224
 - small mining operations exempt on agreement, 50-1220
 - transfer of interest by operator, release of first operator, duties of successor, 50-1210
- Resource indemnity trust account tax, 84-7001 to 84-7013—See TAXATION
- Right of way to mines and mining claims
 - alternate facilities to be constructed when roads and alleys condemned for open pit mining, 50-814
 - residential property near open pit mine
 - agreement to purchase prerequisite to condemnation of right of way, 50-813
 - measure of compensation on condemnation, 50-815
 - notice to owners of intent to condemn, 50-816
- Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
- Safety in mines other than coal mines
 - access of division personnel to premises, 50-102
 - civil remedies for enforcement of act, 50-118
 - definition of terms, 50-119
 - employment of inspectors by division, 50-101
 - inspections and investigations by division, 50-102
 - mines to which provisions applicable, 50-108
 - order for abatement of hazard or closing of mine, 50-102
 - penalties for violation of act, 50-118
 - reports by mine operators, 50-108
- Strip and underground mining regulation, 50-1034 to 50-1057
 - board of land commissioners, orders, rules, hearings, 50-1037
 - conservation and prevention of waste of strippable coal, 50-1401 to 50-1409
 - appeal to board from disapproval of plan, hearing, procedure, 50-1406
 - approved plan required of operator, period for which effective, 50-1404
 - civil penalty for operation without or in noncompliance with plan, 50-1407
 - definition of terms, 50-1403
 - policy and purposes of law, 50-1402
 - procedure for hearings and appeals, 50-1408
 - rules of board to prevent waste, 50-1406
 - short title, 50-1401
 - "strippable coal" defined, 50-1403
 - submission of plan to department, review, approval or disapproval, procedure, 50-1405
 - violation of board rule as misdemeanor, 50-1407

INDEX

References are to Title and Section numbers

MINES AND MINING (Continued)

Strip and underground mining regulation (Continued)

- definition of terms, 50-1036
- department of state lands to administer law, duties and functions, 50-1038
- federal, state or other funds, board authorized to accept, 50-1053
- mine site location permit for new mine or mining permit required, 50-1606
 - additional permits denied to operator repeatedly in noncompliance or violation, 50-1609(2)
- application for permit, contents, 50-1607(1)
- board of land commissioners, orders, rules, duties, 50-1604
- bond forfeiture as basis for denial of another permit, exception, 50-1609(2)
- civil penalties for violation, 50-1611
- definition of terms, 50-1603
- department of state lands to administer law, orders, rules, duties, 50-1605
- duration of permit, 50-1615
- exercise of general police power as basis of law, 50-1602
- fees and other moneys, deposit, use, 50-1610
- hearings and appeals, Administrative Procedure Act applicable, 50-1613
- information submitted by operator, acceptance by board authorized, 50-1614
- injunction available against violation, 50-1611
- issuance of permit, fee, 50-1607(3)(4)
- mandamus to compel enforcement, 50-1612
- noncompliance by operator, notice, suspension of permit, reinstatement, 50-1609
- notice to applicant of approval, time for, 50-1607(3)
- other permits suspended for noncompliance, reinstatement, 50-1609(2)
- performance bond required of operator, amount, 50-1607
- policy of state, purposes of law, 50-1602
- prior preparatory work and strip mining permits unaffected, 50-1617
- reclamation plans submitted with application, notice of approval or rejection, 50-1607(1)(3)
- refusal of permit, grounds, 50-1608
- scope of permit, preparatory work authorized by permit, 50-1607(2)
- short title of law, 50-1601
- sufficiency of information for permit to be stated by department, binding effect, 50-1616
- unencumbered balance of funds not to lapse, 50-1610
- violation as misdemeanor, penalty, 50-1611
- mining and reclamation fund created, purpose, 50-1052
 - fees, forfeiture and other receipts credited to fund, 50-1052
- reclamation by board, appropriation from fund for, 50-1054
- unexpended balance not to lapse, 50-1052
- permit required for strip or underground mining, application, contents, fee, bond, 50-1039
 - amendment of permit increasing or reducing acreage, procedure, fee, 50-1040
 - consent of surface owner, when required to accompany application, 50-1039.1
 - detailed plans to accompany application, contents, 50-1039
 - maps to accompany application, 50-1039
 - refusal of permit, grounds, 50-1042
 - suspension or revocation, notice of noncompliance, procedure, 50-1050
- policy of state, legislative findings, 50-1035
- procedure for hearings and appeals, 50-1057
- prospecting permit required, application, contents, fee, 50-1041
 - documents to accompany application, 50-1041
 - prompt reclamation, when required, 50-1041 (5)
 - reclamation and revegetation bond required, 50-1041 (4)
 - refusal of permit, grounds, 50-1042
- reclamation and revegetation of affected land required, 50-1043
 - alternative plans authorized, board approval required, notice, 50-1044
 - annual report of reclamation work required of operator, map to accompany report, 50-1049
 - area strip mining required, purpose, 50-1044
 - commencement of reclamation, time for, 50-1046
 - operations to be kept current, 50-1046

INDEX

References are to Title and Section numbers

MINES AND MINING (Continued)

Strip and underground mining regulation (Continued)

- reclamation and revegetation of affected land required (Continued)
 - original contour of land, approximate restoration required, 50-1044
 - planting of vegetation, 50-1045
 - planting report required prior to expiration of permit, contents, release of bond, 50-1047
 - plan to be submitted to department, procedure for approval, 50-1043
 - reinstatement of revoked permit or issuance of subsequent permit, requirements for, 50-1050
 - release of bond upon completion of reclamation and revegetation, 50-1044
 - specific duties of operator, 50-1043
 - subsidence stabilization required, 50-1043
 - topsoil to be preserved, 50-1044
 - vegetation planted as property of landowner, 50-1048
 - water runoff to be controlled, 50-1044
- reclamation work by board authorized, available funds for, 50-1053, 50-1054
- short title, 50-1034
- "strip mining" defined, 50-1036
- successive operators, when first operator released, 50-1051
- "underground mining" defined, 50-1036 (20)
- violations, civil and criminal remedies, 50-1055, 50-1056
 - civil penalties, 50-1056
 - damages, action by injured party, 50-1055
 - mandamus to compel enforcement, 50-1055
 - misdeemeanor, penalty, 50-1056
 - other remedies available, 50-1055

Strip coal mining license tax, 84-1302 to 84-1304

Underground mining regulation—See Strip and underground mining regulation, above

- Uranium solution extraction, control and regulation of, 50-1701 to 50-1704
 - constitutional mandate and authority, Const., IX; 50-1701
 - definition of terms, 50-1702
 - legislative findings and policy, 50-1701
 - review by department, subsequent report and recommendation, 50-1703
 - "solution extraction" defined, 50-1702 (2)
 - solution extraction operations suspended for period of two years, 50-1704.

MISDEMEANORS

Definition, 94-2-101 (31)

Offenses defined outside Criminal Code to be classified, 94-1-105(2)

Purpose and basis for classification of offenses, 94-1-105(1)

Time limitation on prosecution, 94-1-106(2)

MISREPRESENTATION

Uniform Commercial Code supplemented by general principles of law, 87A-1-103

MISSING PERSONS

Conservator, appointment, 91A-5-401 (2) (a)—See PROTECTIVE PROCEEDINGS

Continuous absence as evidence of death, 91A-1-107

Disposition of unclaimed property, 91A-3-914 (1)

Guardian ad litem, appointment, 91A-403 (4)

Missing person not dead, right of recovery, limitations, 91A-3-412 (5), 91A-3-914 (2)

Official records as evidence of status, 91A-1-107 (2)

MISTAKE

Uniform Commercial Code supplemented by general principles of law, 87A-1-103

MOBILE HOMES

Construction standards, compliance with required, 69-2123

fees for inspections, 69-2124

legislative findings and policy, 69-2122

rules and regulations establishing standards, 69-2122

testing of models, 69-2124

Fees in addition to registration and license fees, 32-3305

Taxation, 84-6601 to 84-6607—See TAXATION, Mobile homes

INDEX

References are to Title and Section numbers

MOLOTOV COCKTAILS

Possession in public place with felonious intent as felony, penalty, 69-1932
definition, 69-1931

MONOPOLIES

Unfair practices act

- department to administer act, 51-113
- alteration of invoice to mislead department as misdemeanor, 51-116
- cost surveys established by department, notice, hearing, 51-114
- "department" defined, 51-101.1
- enforcement procedures of department, 51-113
- fair price for agricultural products, determination by department, 51-106
- hearings and investigations, powers of department, 51-115
- judicial enforcement of department orders, 51-115
- judicial review of department orders, 51-113

MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

See LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

MONTANA RETAIL INSTALLMENT SALES ACT

Text of act, 74-601 to 74-612—See INSTALLMENT SALES ACT

MONTANA SALARY COMMISSION

- Chairman and secretary, selection, 59-1402
- Constitutional requirement, 1972 Const., XIII, 3
- Creation, composition, terms of members, vacancies, 59-1401
- Meetings of commission, quorum, 59-1402
- Per diem and expenses of members, 59-1402
- Salary recommendation of commission, 59-1404
- Studies comparative with other states of salaries paid judicial, legislative and executive officers, 59-1403

MONTANA SMALL BUSINESS PURCHASING ACT

See STATE PURCHASES

MONTANA TRADE COMMISSION

Review of orders, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A

MORTGAGES

- Abstracts recordable, 73-101.1
- effect of recording, 73-201.1
- Assignment of mortgage, recording and filing, 52-114
- Chattel mortgages, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
- Decedents' estates, enforcement of mortgage claim, 91A-3-809, 91A-3-814—See DECEDENTS' ESTATES, Creditors' claims
- Definition of term, 19-103
- Foreclosure
 - attorney fee to be allowed by court, 93-8613
 - deficiency judgment, docketing, 93-6001
 - parties to foreclosure action, 93-6001
 - power of sale contained in mortgage, alternatives available, 93-6004
 - advertising required for sale under power, 93-6005
 - attorney fees allowed to mortgagee, 93-6007
 - redemption of property sold under power, 93-6006
 - proceeds of sale, application, 93-6001
 - sale of property directed by court, 93-6001
- Negotiability of note secured by mortgage, 93-6010
- Real and personal property, mortgages covering both, 52-212
- Small tract financing act, 52-401 to 52-417—See TRUST INDENTURES
- Subordination of mortgage agreement, recording, 52-116
- Uniform Commercial Code, conflicts with general mortgage law, 52-117

INDEX

References are to Title and Section numbers

MORTGAGES (Continued)

- Unit ownership property, attachment and release of mortgages against, 67-2324
 - blanket mortgages, release on conveyance of units, 67-2323
 - individual units, encumbering permitted, 67-2304
- Validation of defectively executed instruments, 73-207 et seq.
- Waiver of mortgage in favor of subsequent interest, recording, 52-116

MORTICIANS AND FUNERAL DIRECTORS

- Autopsies ordered by coroner, liability of mortuary limited, 95-813
- Board of morticians
 - administrative services provided by department, 82A-1603
 - appointment, qualifications and terms of members, 82A-1602.16
 - compensation, members serve without, reimbursement of expense, 66-2703
 - continuation in office of board members, 82A-1606
 - employment of personnel for board, 82A-1604
 - existence and composition of board, 82A-1602.16
 - legal assistance and hearings by board, 82A-1604
 - meetings of board, 66-2704
 - officers of board, 66-2703
 - quorum at meetings, 66-2704
 - retention of functions by board, 82A-1605
- Cremated remains delivered to mausoleum-columbarium authority, exemption from liability on, 9-604
- Definition of terms, 66-2701
- Fees collected by department
 - annual license fee of morticians, 66-2711
 - deposit and use of fees, 66-2706
 - examination fee for morticians, 66-2709
 - funeral directing annual fee, 66-2707
 - intern mortician's license fee, 66-2710
 - mortuary license, 66-2713
- Inspection of mortuary, 66-2713
- Insurers, prohibited relations with, 40-3521
- Licenses
 - annual renewal of mortician's license, 66-2711
 - criminal offenders, licensing, 66-4001 to 66-4005
 - examination of applicants for mortician's license, 66-2709
 - funeral director's license issued to previous licensees, 66-2707
 - intern mortician's license, 66-2710
 - mortuary license, 66-2713
 - previously licensed embalmers, licensing as mortician, 66-2711
 - qualifications for mortician's license, 66-2708
 - reciprocal licensing without examination, 66-2712
 - required for practice of embalming, mortuary science or funeral directing, 66-2707, 66-2708
 - revocation or suspension of license
 - grounds for revoking or suspending funeral director's license, 66-2714
 - hearing and notice on suspension or revocation, 66-2715
 - mortuary license, grounds for suspension or revocation, 66-2713
- Rules and regulations, adoption by board, 66-2704
- Sanitary standards for mortuary, 66-2713
- Violation of act as misdemeanor, 66-2717

MOTELS

See HOTELS AND MOTELS

MOTIONS

- Ambiguous pleadings, motion for more definite statement, M. R. Civ. P., Rule 12(e)
- Appearance, filing of motion by defendant constituting, 93-8505
- Application for order to be by motion, M. R. Civ. P., Rule 7(b)
- Consolidation of defenses required, M. R. Civ. P., Rule 12(g)

INDEX

References are to Title and Section numbers

MOTIONS (Continued)

- Criminal cases, 95-1701 to 95-1710—See **CRIMINAL PROCEDURE**, Pretrial motions
 - appeals, requirements for motions, 95-2415
 - filing with judge, 95-2413
 - new trial, motion for, 95-2101
 - post-conviction hearing, time for motion, 95-2604
- Defenses permitted by motion, M. R. Civ. P., Rule 12(b)
- Directed verdicts, motion for, M. R. Civ. P., Rule 50
- Evidence presented on hearing of motions, M. R. Civ. P., Rule 43(e)
- Failure to state claim raised by motion, M. R. Civ. P., Rule 12(b)
- Filing with court required, M. R. Civ. P., Rule 5(d)
- Findings of fact unnecessary in ruling on motion, M. R. Civ. P., Rule 52(a)
- Form of motion prescribed, M. R. Civ. P., Rule 7(b)
- Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 15, 19, 20
- Hearing and determination before trial, M. R. Civ. P., Rule 12(d)
- Insufficiency of process raised by motion, M. R. Civ. P., Rule 12(b)
- Judgment notwithstanding the verdict, motion for, M. R. Civ. P., Rules 50(b)-(d)
 - conditional rulings on grant of motion, M. R. Civ. P., Rule 50(c)
 - denial of motion, M. R. Civ. P., Rule 50(d)
- Judgments on pleadings, motion for, M. R. Civ. P., Rule 12(c)
- Jurisdictional defenses raised by motion, M. R. Civ. P., Rule 12(b)
- Mistaken judgment or order, grounds and procedure for relief from, M. R. Civ. P., Rule 60
- New trial, motion for, M. R. Civ. P., Rule 59
- Parties, defects raised by motion, M. R. Civ. P., Rule 12(b)
- Relief from judgment or order, motions for, M. R. Civ. P., Rules 60(a), (b)
 - time for hearing and determining motions, M. R. Civ. P., Rule 60(c)
- Service on parties, when required, M. R. Civ. P., Rule 5(a)
- Striking pleadings or matter therein, motion for, M. R. Civ. P., Rule 12(f)
- Summary judgment, motion for, M. R. Civ. P., Rule 56
- Time allowed for hearing of motions, M. R. Civ. P., Rule 6(d)
- Time allowed for pleading after ruling on motions, M. R. Civ. P., Rule 12(a)
- Waiver of defenses by failure to move, M. R. Civ. P., Rule 12(h)

MOTORBOATS

Accidents

- accident report form, 69-3512
- duty of operators to render aid, 69-3512
- investigation by sheriff, 69-3512

Boat liveries

- record of persons hiring, required to be kept, 69-3507
- safety equipment required, 69-3507

Boats with operative federal approved numbering system, 69-3504

Civil liability of owner, 69-3515

Definitions, 69-3502

Enforcement of act, 69-3517

Garbage, refuse or waste, discharge from boat prohibited, 69-3508.1

- equipment required on boats, 69-3505

Gasoline tax money allocated to park improvement where boating allowed, 32-2601

Landowner's restricted liability to gratuitous licensee for boating, 67-808

- definition of recreational purposes, 67-809

Legislative policy, 69-3501

Liability of owner for negligence, 69-3515

Numbering

- application for number, 69-3504
- assessed value to be entered on application, 69-3504
- change of address, 69-3504
- decals, 69-3504.1
- exemptions from, 69-3506
- fee for application, 69-3504
- manufacturers or dealers, 69-3504
- operation of unnumbered motorboats or vessels prohibited, penalty for violation, 69-3503

INDEX

References are to Title and Section numbers

MOTORBOATS (Continued)

Numbering (Continued)

- painting or attaching of number to boat, 69-3504
- period of time number to remain in effect, 69-3504
- transfer of ownership of boat, 69-3504

Numbers and identification marks, obscuring as criminal offense, punishment, 94-6-311

Operating, prohibited actions, 69-3508

Operation of unnumbered motorboats or vessels prohibited, 69-3503

Overloading prohibited, 69-3511

Overpowering prohibited, 69-3511

Penalty for violations of act, 69-3518

Prohibited operation, 69-3508

Property tax on vessel, proof of payment required, 69-3504

Restricted areas, 69-3510

Right-of-way, 69-3509

Rules and regulations, 69-3516

Safety education program to be co-ordinated by board state wide, 69-3516.1

Safety equipment required, enumeration, 69-3505

Toilet facilities on boats, specifications, 69-3505

Transfer of ownership, 69-3504

Transmittal of information, 69-3513

Unauthorized entry as criminal trespass, punishment, 94-6-202—See TRESPASS

Unauthorized use as criminal offense, punishment, affirmative defense, 94-6-305

Violations of act, penalty, 69-3518

Water-skis or surfboards, hours during which operation prohibited, 69-3514

MOTOR CARRIERS

Acts deemed prima facie indication of status as motor carrier, 8-121

Agricultural commodities, vehicles used for carriage exempt, 8-101

Ambulances exempt, 8-101

"Board" defined, 8-101

Certificate of convenience and necessity

class A carriers, 8-108

class B carriers, 8-109

class C carriers, 8-110, 8-111

federal contract for transportation, certificate issued on, 8-110, 8-111

leasing of certificate, 8-103.3

livestock transportation, 8-101.2

Civil penalty for violations, 8-119

Commission, regulatory powers, 8-103

"commission," defined, 8-101

Common carrier motor transportation system to be encouraged 8-103

Definition of terms, 8-101

Exemptions generally, 8-101 to 8-101.2

Field inspectors, employment and powers, 8-103

Highway construction vehicles exempt, 8-101

Interchange of equipment authorized, 8-103.2

Intrastate shipments, liability of carrier for loss, damage, or injury to property, 8-812.1

delay in disposition of claim, allowance of attorney fees, 8-812.1

liability between carriers, 8-812.2

limitation of liability unlawful and void, exceptions, 8-812.1

Joint agreements between carriers, investigation and approval or disapproval by public service commission, 8-103.4

antitrust exemption of approved agreement, 8-103.4 (8)

Junk vehicle carriers exempt, 8-101

Leasing of power equipment authorized, 8-103.1

Livestock transportation

certificate required for commercial transportation, 8-101.2

farmers and ranchers exempt from regulation, 8-101.1

Logging or mining vehicles exempt, 8-101

Municipal taxes and fees, restriction on, 32-3206

INDEX

References are to Title and Section numbers

MOTOR CARRIERS (Continued)

Penalty for violations of act, 8-119

Public service commission, regulatory powers, 8-103

Rate regulation

board's duty to fix rate, 8-104.1

changes in schedule, approval by board required, 8-104.2

procedure for approval, 8-104.5

deviation from schedules prohibited, 8-104.3

differences between classes of carriers to be recognized, 8-103

discrimination prohibited, 8-104.4

filing of schedules with board, 8-104.2

investigation of complaints, 8-104.4

preferences prohibited, 8-104.4

recovery of excess charges, 8-104.6

suspension of schedules by board, 8-104.5

School bus operation exempt from regulation, 8-101

Securities, when exempt from securities act, 15-2013

Solid waste transportation contracts sufficient proof for class C certificate, 8-110

Supervisor of motor carriers, appointment, qualifications and duties, 8-103

Suspension of intrastate operating authority upon petition of carrier, 8-107.1

absence of public convenience and necessity, evidence required, 8-107.1

presumption from suspension of twelve consecutive months, 8-107.2

period of suspension limited, 8-107.1

Temporary authority for emergency service, 8-131

Tow truck and wreckers exempt, 8-101

Weight, dimensions and characteristics of vehicles permitted use of the highways, 32-1123.1 to 32-1131—See HIGHWAYS, BRIDGES AND FERRIES

MOTORCYCLES

See MOTOR VEHICLES, Motorcycles

MOTOR VEHICLE INSPECTION

See MOTOR VEHICLES, Inspection of motor vehicles

MOTOR VEHICLES

Abandoned vehicles

junk vehicle delivered to wrecking facility, procedure, 53-903(3)

notice to owner of removal, 53-903

penalty for violation of act, 53-909

prohibition against leaving vehicles on highways or public property, 53-901

reclaiming vehicles removed by officers, 53-904

removal of vehicles by law enforcement agencies, 53-902

sale of vehicle if not reclaimed, 53-905

certificate of ownership, issuance to buyer, 53-907

certificate of sale, issuance and contents, 53-906

proceeds of sale, disposition, 53-908

return of sale by sheriff, 53-908

Accident reports, when required, 32-1208

Arrest bond certificates issued by automobile club or insurance company, 95-1121 to 95-1123

Brakes required on vehicles, 32-21-143.1

hydraulic brake fluid, standards and regulation, 32-21-143.4

maintenance and adjustment of brakes required, 32-21-143.3

performance required of brakes, 32-21-143.2

Campers, compliance with construction standards required, 69-2123

fees for inspections, 69-2124

legislative findings and policy, 69-2122

rules and regulations establishing standards, 69-2122

tax-paid decal to be displayed on vehicle, application, issuance, fee, 53-645

annual application and renewal, 53-647

definition of "camper," 53-644

violation as misdemeanor, penalty, 53-646

testing of models, 69-2124

INDEX

References are to Title and Section numbers

MOTOR VEHICLES (Continued)

Dealers

- amount of fees payable for plates, 53-122
- application for license, contents, filing and verification, 53-118
- bond required of dealer, 53-118
- building or lot required of dealer, 53-118
- definition of dealer, 53-133
- demonstration permits for trucks and trailers, 53-118.6 to 53-118.10—See Demonstration of trucks and trailers, below
- investigation of license applications, 53-118
- penalty for engaging in business without license, 53-118
- plates assigned to dealers, description and use, 53-118
- records of purchases and sales required of dealers, 53-118
- used cars, certificate as to previous ownership to be delivered, 53-133

Demonstration of trucks and trailers, permit and payment of fee required, 32-3315.1

- amount of fee, 32-3315.2
- disposition of fees, 32-3315.5
- application for permit, 32-3315.2
- dealer's plate, display required, 32-3315.1
- duration of permit, 32-3315.3
- form of permit and application, 32-3315.2
- lease of vehicle under permit prohibited, 32-3315.3
- more than one permit issued on single application, 32-3315.2
- operation of vehicle under permit, 32-3315.3
- violation of provisions as misdemeanor, 32-3315.4

Division of motor vehicles created, 82A-1204

- functions, 82A-1205, 82A-1206
- reimbursement of appropriated funds, 53-122.1

Drive-away and tow-away transporters

- annual permit fee payable, 32-3401
- carrier fees additional to transporter fees, 32-3404
- display of plates required, 32-3407
- disposition of fees collected, 32-3403
- exemption from payment of transporter fees, 32-3406
- list of permit holders and of transit plates furnished department of highways, 32-3408
- plates and devices issued to transporters, 32-3401
- trip fees payable by transporters, 32-3402
- truck and trailer fees, exemption from payment, 32-3405

Driving under influence of liquor or drugs unlawful, penalty, 32-2142

- implied consent to test for alcohol, 32-2142.1
- presumptions as to intoxication from test results, 32-2142
- suspension of license for refusal to submit to test, 32-2142.1
- judicial review of proceedings, 32-2142.2
- test for alcohol, procedure for administration, 32-2142.3

Emergency vehicles, audible and visible signals on, 32-21-132

Equipment required on commercial tow cars, 32-21-161

- penalty for violation, 32-21-162

Equipment Safety Compact ratified, text, 32-21-166

- accounts of safety commission, inspection by state examiner, 32-21-174
- budget of safety commission, 32-21-173
- commissioner from state to serve on safety commission, designation, 32-21-169
- co-operation of governmental agencies with safety commission, 32-21-171
- documents of commission to be filed with highway patrol board, 32-21-172
- governor is executive head for purposes of compact, 32-21-175
- legislative approval required for commission rules and regulations, 32-21-168
- legislative findings on equipment safety, 32-21-167
- notices to be given to highway patrol supervisor, 32-21-172
- retirement agreements for commission employees, 32-21-170
- statutory requirements continued in force, 32-21-168

Fees payable in addition to registration and license fees

- administrative costs retained by county treasurer, 32-3204
- alternative additional fees on truck-trailer combinations, 32-3302.1

INDEX

References are to Title and Section numbers

MOTOR VEHICLES (Continued)

Fees payable in addition to registration and license fees (Continued)

- blank forms furnished county treasurers by department, 32-3205.1
- buses, amounts payable, 32-3307
- credit of fees to department, 32-3205
- enforcement of provisions by highway patrol, 32-3318
- exemptions, 32-3319
- expiration date of fees, 32-3202
- farm and ranch vehicles, amounts payable, 32-3306
- foreign registered vehicles, amount of fees payable, 32-3312
 - temporary permits for operation of foreign vehicles, 32-3313
 - time for payment of fees by nonresidents, 32-3314
- half year fee payable after July 1, 32-3201
- municipal fees, restriction on, 32-3206
- penalty for operation without payment of fees, 32-3316
 - exceeding weight for which registered, 32-3317
- proration of fees for period less than calendar year, 32-3201 (4)
- purpose of fees, 32-3320
- quarterly payment of fees, when permitted, 32-3308
 - failure to make quarterly payment, misdemeanor, impoundment of vehicle, 32-3309
- remittance by county treasurer to state treasurer, 32-3204
- replacement vehicle, transfer of certificate, registration or license to, 32-3203
- sales tax on new passenger vehicles, 32-3315
- soil conservation and land leveling vehicles, special rate, 32-3306
- three-unit combination fee in lieu of other fees, 32-3310
- time for payment of fees, 32-3201
 - proration for period less than calendar year, 32-3201 (4)

trailers and semitrailers

- alternative additional fees on truck-trailer combinations, 32-3302.1
- amount payable as fees, 32-3302
- blank forms furnished county treasurers by department, 32-3205.1
- co-operative association vehicles exempt, 32-3306
- farm and ranch trailers, percentage payable, 32-3306
- gross weight over 42,000 pounds, additional amounts payable, 32-3303
- house trailers, amount of fee, 32-3305
- livestock trailers, percentage payable, 32-3304
- log trailers, percentage payable, 32-3304
- low-boy trailers, percentage payable, 32-3304
- pole trailers, percentage payable, 32-3304
- transfer of certificate, registration or license, 32-3203

trucks and truck-tractors

- amount of fees payable, 32-3301
- concrete mixer trucks and trailers, percentage payable, 32-3304.1
- co-operative association vehicles exempt, 32-3306
- farm and ranch trucks, percentage payable, 32-3306
- gross weight over 42,000 pounds, additional amounts payable, 32-3303
- livestock trucks, percentage payable, 32-3304
- log trucks, percentage payable, 32-3304
- low-boy trailers, trucks used to haul, 32-3304

Fenders required on vehicles, 32-21-149.1

Forest development roads, enforcement of traffic laws on, 32-2124.4

definition of terms, 32-2124.3

special service roads excepted, 32-2124.5

Guaranteed arrest bond certificates issued by automobile club or insurance company, 95-1121 to 95-1123

Habitual traffic offender, adjudication proceedings, 31-175 to 31-190—See HABITUAL TRAFFIC OFFENDERS

Identification numbers, alteration a misdemeanor, 53-139.1

Implements of husbandry, weight, size and distance traveled, limitations, 32-1123

Inspection of motor vehicles, 53-1101 to 53-1115

certificate of inspection and approval issued by operator of inspection station, 53-1105

INDEX

References are to Title and Section numbers

MOTOR VEHICLES (Continued)

Inspection of motor vehicles (Continued)

certificate of inspection (Continued)

- complaints of vehicle owners, forms to be supplied, 53-1106
- conflicting reports and disputes resolved by department, 53-1105
- counterfeiting of certificate prohibited, 53-1109
- display of fictitious or unauthorized certificate prohibited, 53-1109
- fee for inspection, 53-1106
- inspection certificate to be placed in or on vehicle, 53-1106
- minimum standards for issuance of certificate, 53-1105
- record and report of each inspection forwarded to department, 53-1105
- record of complaints to be kept by department, 53-1106
- unauthorized possession of certificates prohibited, 53-1106
- unused, lost, mutilated or destroyed certificates, refund, 53-1107

collectors' item vehicles exempt, 53-1110

inspection required, vehicles excepted, 53-1101

inspection stations to be licensed, qualifications, fee, 53-1103

- advertising by station regulated, unauthorized advertising prohibited, 53-1108
- fee collected from stations and paid into highway fund, amount, 53-1107
- supervision and periodical inspection of stations by department, 53-1104

repair or adjustment of vehicles found substandard, time allowed, 53-1107

- additional fee prohibited upon return of repaired vehicle, 53-1107

revocation or suspension of, or refusal to issue, inspection station license, relicensing, 53-1104

- maximum duration of suspension, 53-1104

- relicensing after revocation, time for, 53-1104

rules and regulations by department authorized, 53-1111

time and frequency of inspection, 53-1102

verification of certification by police, stopping of vehicle authorized, 53-1112

violations, penalties, 53-1113 to 53-1115

- acts of vehicle owner constituting misdemeanor, 53-1114
- inspection station misdemeanors, 53-1115
- revocation of registration, 53-1113

Insurance

reimbursement for total loss of vehicle to be based on actual replacement value, 40-4404

restrictions on cancellation or nonrenewal, 40-4405 to 40-4412

uninsured motorist coverage added unless rejected, 40-4403

Joint ownership with right of survivorship, when presumed, 53-107

License plates

collector's vehicles, 53-106.1

dealers' plates, 53-118

disabled veterans, issuance of license plates to, 53-106.8

- one automobile, limitation to, 53-106.10

- transfer of plates prohibited, 53-106.9

- wrongful attempt to secure free plates as misdemeanor, 53-106.11

fees payable, disposition and use, 53-106, 53-122

foreign commercial vehicles, Montana plates required, 53-129

four years as minimum period for issuance, 53-106 (1)

junk vehicle being driven or towed to auto wrecking graveyard, license not required, 53-119

law enforcement agencies, issuance of plates and registration without public disclosure, restrictions, 82-424

national guard plates authorized, 53-106.7

personalized license plates authorized, 53-148

- application for plates, 53-152

- color, design, numbering and lettering of plates, 53-149

- fees for plates, disposition, 53-153

- good taste and decency required in lettering, 53-152

- issuance restricted to registered owner of vehicle, 53-151

- misleading or duplication of license plates prohibited, 53-152

- "personalized license plates" defined, 53-150

proportionally registered vehicles, plates or stickers issued for, 53-713

replacement of lost or damaged plates and validation devices, 53-120

INDEX

References are to Title and Section numbers

MOTOR VEHICLES (Continued)

License plates (Continued)

- specifications for plates, 53-106
- stickers issued in years in which plates not issued, 53-106 (1)
- transfer to another vehicle, 53-146
- transfer to replacement vehicle, 53-106

Lien records, microfilming of expired, 53-101

Liens on vehicles, filing and foreclosure, 53-110

Liquid petroleum gases, tax on motor vehicles propelled by, 84-1862 to 84-1865

Livestock, collision with, negligence not presumed, 32-1020

Motorcycles, regulations for riding, 32-21-105, 32-21-105.1

habitual offenders, adjudication proceedings, 31-175 to 31-190

headgear required for riders, 32-21-105.1 (1)

noise suppression device required on cycle, 32-21-105.1 (2)

decibel limitation, 32-21-105.1(2)

penalties for violation, 32-21-105.1(3)(4)

traffic education programs, issuance of restricted traffic education permit to enrollees, 31-129(b)

Municipal power to tax and regulate vehicle yards, 11-918

Operation across public roads and highways not considered operation on roads, when, 32-2124.1

Parking facilities, municipal power to acquire and construct, 11-986

Police vehicles

approaching police vehicle using audible signal only, duties of driver, 32-2175

audible and visual signals required on vehicle, 32-21-132

Ports of entry and checking stations, establishment by highway commission authorized, 32-2419

co-operation of highway commission with other agencies required, 32-2421

major highways entering state, checking stations required, 32-2420

Radar arrests

admissibility in evidence, 32-2150.1

arrest without warrant authorized, 32-2150.2

erection of signs as prerequisite to arrests, 32-2150.3

posting of signs in municipalities, 32-2150.3

use of radar authorized, 32-2150.1

Reciprocal privileges of interstate fleets

agreements with other states authorized, 53-705

filing and availability of agreements, 53-722

base state registration reciprocity, 53-706

cancellation of reciprocity benefits, grounds for, 53-721

continuation in force of previously effective agreements, 53-723

definition of terms, 53-702

department of highways to administer chapter, 53-704, 53-705

exemptions and benefits of agreements with other states, 53-706

extent of reciprocity, determination by department, 53-708

identification plates or stickers, issuance, 53-713

leased vehicles, application to, 53-709

policy of state declared, 53-701

proportional registration

additional vehicles, registration, 53-715

agreements with other states, implementation by department, 53-707

alternative methods of registration, 53-711

application for proportional registration, 53-712

cost of vehicle to be included in application, 84-729

denial in absence of reciprocity, 53-718

effect of registration, 53-713

fees for registration, computation, 53-712

general registration laws inapplicable, 53-720

identification plates or stickers, issuance, 53-713

joint audits of fleet owner's records, 53-719

new fleets, determination of fees payable, 53-717

other jurisdiction, registration of part of fleet in required, 53-714

INDEX

References are to Title and Section numbers

MOTOR VEHICLES (Continued)

Reciprocal privileges of interstate fleets (Continued)

proportional registration (Continued)

records, preservation and availability, 53-719

taxation of proportionally registered fleets

apportionment on basis of in-state miles traveled, 84-727

assessment for property tax by state board, 84-727

collection of tax by state board, 84-730

cost of vehicle included in application for registration, 84-729

deposit and distribution of taxes, 84-731

partial year's tax payable, 84-727

rate of levy applied, 84-729

registration of vehicle, payment of tax condition precedent to, 84-727

situs in state of vehicles for purposes of taxation, 84-730

value of fleet, method of computation, 84-728

withdrawal of vehicles from registration, credits to account, 53-716

reciprocity extended without agreement, 53-710

supplemental to other laws, 53-724

suspension of reciprocity benefits, grounds for, 53-721

Registrar's position abolished and functions transferred, 82A-1205

Registration

anniversary date registration, 53-154 to 53-162

certain vehicles exempt, 53-154 (a) to (f)

definition of terms, 53-154

designation of registration periods, 53-156

property tax on vehicles, when due, 53-159

assessment date, lien, 53-162

registration periods based on first registration, 53-155

reregistration, date for, registrar to make rules, 53-157

rules and regulations, adoption, 53-160

transitional and new registrations, 53-158

proration of fees during transition, 53-161

collector's vehicles, 53-106.1

fees payable, disposition and use, 53-106, 53-122

city road fund in population centers, amount and segregation, 32-3702

use of city road fund, 32-3703

county motor vehicle fund, fees credited to, 32-3701

transfer of amounts remaining after segregation of city fund, 32-3702

use of moneys in county road fund, 32-3706

fleet registration, 53-701 to 53-724—See Reciprocal privileges of interstate fleets, above

foreign commercial vehicles, registration required, 53-129

funds appropriated for registration, reimbursement, 53-122.1

liens and security interests in vehicles, filing and satisfaction, 53-110

peace officers to enforce law, 53-102

reregistration following transfer of vehicle during year, 53-115

suspension under financial responsibility act, 53-422

tax on vehicles, procedure to insure payment, 53-114

transferred vehicles, new registration required, grace period, penalty for failure, 53-147

failure to make application, penalty, 53-147

grace period, 53-147

used cars, dealer to deliver certificate as to previous ownership, 53-133

Regulations of licensing and taxing extends only to vehicles operated on public roads, 32-2124.2

Road blocks, arrests at, 95-618

Safety program, 32-4601 to 32-4607—See HIGHWAYS, BRIDGES AND FERRIES, Traffic safety program

Safety responsibility act

insurance, limitations on termination or premium increase by carrier, 53-438

maximum duration of license suspension, 53-438

Sales tax on new motor vehicles, amount and payment required, 32-3315

proration for registration period other than calendar year or quarter, 32-3315 (2) (a)

INDEX

References are to Title and Section numbers

MOTOR VEHICLES (Continued)

School buses, 75-7001 to 75-7024—See SCHOOLS, Transportation of pupils
 flashing red or amber lights on, 32-21-132
 use of lights when stopped or preparing to stop, 32-2197
 semiannual inspection, 32-21-155.1

Seat belts required in new vehicles, 32-21-150.1
 penalty for violations, 32-21-150.3
 specifications for seat belts, 32-21-150.2

Serial numbers and identification marks, obscuring as criminal offense, punishment, 94-6-311

Slow moving vehicles

 reflectorized emblem required, 32-21-130
 turn-out, when required on two-lane highway, 32-2147

Snowmobiles

 accident reports, 53-1021
 dealer registration of demonstration vehicles, fees, 53-1029
 definition of terms, 53-1012
 driving of game or livestock prohibited, exception, 53-1020
 driving under influence prohibited, 53-1019
 enforcement powers of officers, 53-1022
 firing of arms from snowmobile prohibited, 53-1020
 lights required for operation on public highways, 53-1018
 lights required in hours of darkness, 53-1019
 noise suppression, 53-1020
 operators' qualifications, 53-1019

 license required to operate on highways, 53-1018

 penalties for violations, 53-1023

 political subdivision licensing and fees prohibited, 53-1016

 railroad right of way, restrictions on operation on, 53-1020

 reckless driving prohibited, 53-1019

 registration required, 53-1013

 duplication of lost or mutilated certificate, 53-1015

 publicly owned vehicles exempt, 53-1016

 transfer of title or interest, 53-1014

 roads and streets, restrictions on use, 53-1018

 serial numbers and identification marks, obscuring as criminal offense, punishment, 94-6-311

 speed restriction, 53-1019

 stolen and recovered snowmobiles, reporting and distribution of lists, 53-1017

 tax-paid decals to be displayed, 53-1025

 annual issuance of decals, 53-1026

 application for decal, 53-1025, 53-1026

 definition of terms, 53-1024

 enforcement of act, 53-1028

 grace period for newly purchased snowmobiles, 53-1026 (2)

 lost, mutilated or illegible decal, issuance of duplicate, fee, 53-1025.1

 penalty for violation, 53-1027

 unauthorized entry as criminal trespass, punishment, 94-6-202

Speed contests, permission of authorities required, 32-2143.1

 drag racing, penalty, 32-2143.2

Speed limits—See Traffic rules and regulations, below

State-owned vehicles

 annual summary of operating costs and history records, 53-519

 assignment of vehicles to state agencies, 53-515

 costs of operation paid by using agencies, 53-515

 department of highways as custodian of certain state-owned vehicles, 53-514

 exemption of designated vehicles, 53-520

 interagency rental agreements, regulations for, 53-519.2

 operating history records, 53-519

 entries in record on trips, 53-518

 personal use prohibited, 53-517

 decal affixed to vehicle, 53-518

 misdemeanor and dismissal from employment, 53-521

INDEX

References are to Title and Section numbers

MOTOR VEHICLES (Continued)

State-owned vehicles (Continued)

- privately owned vehicles used on state business, rules and regulations governing, 53-519.3
- requisitions for purchases, contents and submission, 53-519
- rules for operation, 53-515
 - travel rules, 53-518
- seal affixed to state-owned vehicle, 53-516
- title in name of state, transfer of vehicles by agencies, effect of federal funding, 53-514
- transfer of vehicle custody to agencies, 53-519.1
- trip applications and records, 53-518
- use of vehicles by employees, rules and regulations to be established, 53-519.3
- vehicles not available for use, procedures for determining, 53-519.3
- violation as misdemeanor, dismissal from employment, 53-521

Taxing of mobile homes, 84-6601 to 84-6607

Taxing of vehicles or fuels extends only to vehicles operated on public roads, 32-2124.2

- Tax levy, assessment and registration provisions, 53-114, 84-406, 84-6008
 - exemption of anniversary date registration vehicles, 53-114 (9)

Traffic rules and regulations

- approach ramp, duty of driver entering or crossing highway from, 32-2173
 - automatic signals, meaning of signs, 32-2137
 - bicycles, riding in single file required, exception, passing, 32-2188
 - required equipment on bicycles, 32-2190
 - blind person, stopping for, 71-1307
 - penalty for violation, 71-1308
 - controlled access facilities, authority to regulate use, 32-4305
 - violation of regulations, penalties, 32-4311
 - county commissioners empowered to restrict traffic on county roads, 32-2802
 - finances, forfeitures and assessments, disposition, 31-114
 - operation of vehicles across public roads and highways not considered operation on roads, when, 32-2124.1
 - penalty assessment for driver education, 31-114
 - police vehicles in authorized use, privileges, 32-2128
 - approaching police vehicle using audible signal only, duty of driver, 32-2175
 - reduced nighttime speed limits at certain locations authorized, 32-2145(3)
 - rendering vehicular or pedestrian traffic impassable as disorderly conduct, punishment, 94-8-101
 - school buses, special regulations applicable to, 75-7007
 - school safety patrol, drivers required to stop for, 32-2177
 - sign manual, state highway commission to adopt, 32-2133
 - signs, state highway commission to place and maintain, 32-2134
 - special speed limit at specific locations authorized, 32-2145
 - speed contests, permission of authorities required, drag racing, penalty, 32-2143.2
 - speed limit imposed by federal law applicable in state, 32-2144.1
 - exception to basic rule, 32-2144.1
 - existing statutes not affected, 32-2144.7
 - lower speed limits not prohibited, 32-2144.5
 - not applicable to certain streets and highways, 32-2144.2
 - not subject to Administrative Procedure Act, 32-2144.4
 - termination when no longer required by federal law, 32-2144.3
 - violation not charged against driver's record nor prejudicial to insurance status, 32-2144.6
 - violation, penalty, distribution of fine, 32-2144.6
 - speed limits on federal-aid highways in urban areas, 32-2146
 - traffic lights, meaning of signals, 32-2137
 - warning devices to be carried in certain vehicles, 32-21-151
 - "yield" sign, duty of driver approaching, 32-2174
- Traffic safety program, 32-4601 to 32-4607—See HIGHWAYS, BRIDGES AND FERRIES, Traffic safety program

INDEX

References are to Title and Section numbers

MOTOR VEHICLES (Continued)

Transfer of title or interest

- dealer transactions, change of registration and passage of title, 53-109.1
- new vehicles, sticker provisions applicable to, 53-109.2
- time allowed for registration by purchaser, 53-109.4

forwarding of certificates to county treasurer and registrar, 53-109

new registration required of purchaser, 53-147

temporary windshield sticker issued when registration papers unavailable, 53-109.3

Transit permits for movement of unregistered vehicles, 53-119.1

junk vehicles being driven or towed to wrecking graveyard exempt, 53-119.1

Trucks, tractors and trailers

additional fees payable, 32-3301 to 32-3317—See Fees payable in addition to registration and license fees, above

demonstration permits, 32-3315.1 to 32-3315.5—See Demonstration of trucks and trailers, above

fleet registration, 53-701 to 53-724—See Reciprocal privileges of interstate fleets, above

hauled vehicles exempt from requirements, 53-639.2

owner's name and certificate number to be displayed, 53-801

dealers and manufacturers exempt, 53-802

penalty for violations, 53-803

special mobile equipment defined, 53-642

assessment of taxes, time of, 84-406

identification plate required, annual fee, 53-639.1

weight violations, disposition of fines and penalty assessments, 32-1131

Unauthorized entry of vehicle as criminal trespass, punishment, 94-6-202

Unauthorized use of vehicle, punishment, affirmative defense, 94-6-305

Unlawful operation by child under 18

concurrent jurisdiction of district and inferior courts, 32-21-163

court learning of unlawful operation, proceedings, 32-21-165

impounding the vehicle, when, 32-21-163

penalty, 32-21-163

summoning of child, 32-21-164

Weight, dimensions and characteristics of vehicles permitted use of highways, 32-1123.1 to 32-1131—See HIGHWAYS, BRIDGES AND FERRIES

violation a misdemeanor, penalty, 32-1124, 32-1125, 32-1130

Wrecking facilities, 69-6801 to 69-6810

annual payment to county by department, limit, 69-6807 (4)

crushing and recycling of junk vehicles to be contracted for by department, disposition of moneys received, 69-6806

definition of terms, 69-6801

fees, deposit, disposition, 69-6807

report of department to legislature, 69-6807 (3)

special junk vehicle disposal fee, assessment, 69-6807 (2)

injunction to enforce act, 69-6810

junk vehicle found by law enforcement officials delivered to facility, 53-903

license required for maintenance or operation of wrecking facility, application, fee, display, expiration, 69-6802

denial, suspension or revocation of license, grounds, 69-6809

motor vehicle graveyards to be provided by county, joint operation authorized, 69-6805

disposition of junk vehicle by delivery to graveyard, 69-6806

plan and budget to be submitted to department, 69-6805

possession of junk vehicles as prima facie evidence of wrecking facility, 69-6803

records required of facility, 69-6804

rules to be adopted for enforcement of law, 69-6808

violation as misdemeanor, 69-6810

MOUNTAIN VIEW SCHOOL

See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

MUNICIPAL COURTS

Criminal jurisdiction, 95-303

INDEX

References are to Title and Section numbers

MURDER

See HOMICIDE

MUSEUMS

Historical independent of other institutions, 44-518

N

NARCOTIC DRUGS

Dangerous Drug Act

criminal provisions

altering labels on dangerous drugs, 54-135

penalty, 54-136

fraudulently obtaining dangerous drugs, 54-134

penalty, 54-136

jurisdiction of prosecutions, exclusive in district court, 54-138

possession of dangerous drugs, 54-133

professional practitioners and agents, exemption, 54-132(c)

rehabilitative treatment, 54-137

sale, barter, exchange, or gift of dangerous drugs, 54-132

justices' courts, no jurisdiction, 95-302

Schools to give courses in drug abuse, 75-8904

dependency commission to consult and advise, 75-8905

purpose of requirement, 75-8901

teacher preparation, 75-8902, 75-8903

State institution inmates, furnishing to as misdemeanor, penalty, 80-1418

NATIONAL GUARD

See MILITIA AND MILITARY

NATURAL AREAS PRESERVATION

Acquisition of private property interest to protect natural area authorized, 81-2704, 81-2707

Advisory council, appointment authorized, composition, recommendations, to board, 81-2710

consultation with citizen organizations and state agencies, 81-2711

Board of land commissioners

advisory council recommendations, duties of board, 81-2710

annual report to legislature, 81-2705

consultation with citizen organizations and state agencies, 81-2711

designation of controlled lands as natural areas, 81-2704(1)

notice and public testimony at meeting required, 81-2709(2)

gifts, acceptance by board authorized, 81-2704(4)

rules and regulations, hearing, contents, 81-2709

Definition of terms, 81-2703

Department of state lands, duties, 81-2705

co-operation of department of natural resources, 81-2705

Exchange of state-owned trust land for natural area authorized, limitations, 81-2704

Legislative declaration of policy and intent, 81-2702

Methods for subjecting lands to provisions of act, 81-2704

"Natural area" defined, 81-2703(1)

Natural areas not subject to condemnation or development, existing land uses permitted to continue, 81-2708

Restrictive provisions of other laws, when applicable, 81-2712

Severability of provisions, 81-2713

State lands designated as natural areas by legislature, 81-2704, 81-2706

Title and citation of law, 81-2701

NATURALIZATION

District court power of naturalization, 1972 Const., VII, 4

NATURAL RESOURCES

Depletion and degradation, provision for preventive remedies, 1972 Const., IX, 1

INDEX

References are to Title and Section numbers

NATURAL RESOURCES (Continued)

Geothermal resources exploration and development, 81-2601 to 81-2613—See GEO-THERMAL RESOURCES

Lake areas, protection of, 89-3701 to 89-3712—See LAKES

Natural area preservation, 81-2701 to 81-2713—See NATURAL AREAS PRESER-VATION

Physical alteration or modification of stream, written consent required, 26-1514—See CONSERVATION, Natural Streambed and Land Preservation Act

Reclamation of lands, 1972 Const., IX, 2

Renewable resource development, 89-3601 to 89-3609

bonds authorized for funding of program, 89-3606

credit and taxing power of state pledged, 89-3606 (1)

legislative authorization of bonds, 89-3609

proceeds deposited in clearance fund account, 89-3606 (5)—See clearance fund account, below

refunding bonds authorized, purpose, conditions, deposit of proceeds, 89-3606 (5) to (8)

repayment proceeds deposited in sinking fund account, 89-3606 (5)—See sinking fund account, below

signatures, 89-3606 (4)

terms of bonds, 89-3606 (2) to (4)

clearance fund account authorized, 89-3608

administrative costs paid from fund, 89-3608 (3)

appropriation for funding of program, 89-3608 (4) to (7)

restoration of balances transferred from general fund, when required, 89-3608 (2)

sources of funds, 89-3608 (1), (2)

definition of terms, 89-3602

development loans to farmers and ranchers authorized, 89-3603 (1)

administration of loans by department, assistance by other agencies, 89-3603 (10)

application for loan, 89-3603 (1)

benefit to board member, officer, attorney or employee prohibited, penalty for violation, 89-3603 (9)

interest rate established by board, maximum, 89-3603 (6)

lien of state as security, 89-3603 (7)

maximum amount of loan, 89-3603 (4)

period for repayment, maximum, 89-3603 (5)

purpose of loan, 89-3603 (3)

qualifications of borrowers, 89-3603 (1)

recommendation of department required, 89-3603 (1)

renewable resource development account as source of funds, 89-3603

definition, 89-3602 (3)

rules, adoption by board authorized, 89-3603 (8)

grants to departments and other divisions of state government authorized, 89-3604

approved grants administered by department, 89-3604 (3)

evaluation of project by department, 89-3604 (2)

joint submission with application for development loan, 89-3605 (5)

purposes for which grants made, 89-3604 (4)

recommendation to governor by department, 89-3604 (1)

rules, adoption by department authorized, 89-3604 (5)

sources of funds, 89-3604 (1)

submission of proposal by governor to legislature, 89-3604

loans to political subdivisions or local governments authorized, 89-3605

amount and terms of loan, 89-3605 (4)

approved loans administered by department, 89-3605 (3)

evaluation of project, assistance of other agencies, 89-3605 (2)

recommendation to governor by department, 89-3605 (1)

submission jointly with application for grant, 89-3605 (5)

submission of proposal to legislature by governor, 89-3605 (3)

policy, legislative statement of, 89-3601

INDEX

References are to Title and Section numbers

NATURAL RESOURCES (Continued)

Renewable resource development (Continued)

- sinking fund account authorized, 89-3607
 - certain revenues appropriated and credited to fund, 89-3607 (4)
 - deficiency in account, transfer of funds from general fund, 89-3607 (3)
 - excess over requirements transferred to clearance fund account, 89-3607 (3)
 - purpose and use of fund, 89-3607 (2)
 - revenues subject to appropriation to fund, 89-3607 (1)
- Resource indemnity trust, funding, principal amount, Const., IX, 2
- Water rights, 1972 Const., IX, 3

NATURAL STREAMBED AND LAND PRESERVATION ACT

See CONSERVATION

NEGLIGENCE

- Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623
- Comparative negligence, diminution of damages recoverable, 58-607.1
- Contributory negligence, when recovery barred by, diminution of damages because of, 58-607.1
- Emergency care rendered at scene of accident, restriction on liability for, 17-410
- Medical malpractice, statute of limitations, 93-2624

NEGOTIABLE INSTRUMENTS

See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

NEWSPAPERS

- Freedom of speech, expression, and the press, 1972 Const., II, 7
- Investment advice exempt from securities act, 15-2004
- Libel, notice to publisher and opportunity to correct, 64-207.1
- Protection of sources of information, 93-701-4

NEW TRIAL

- Criminal cases, motion for, 95-2101
 - appeal, authority to order new trial, 95-2426
 - bail, provisions for, 95-1119
- Grounds and procedure, M. R. Civ. P., Rule 59
- Stay of proceedings to enforce judgment pending motion for new trial, M. R. Civ. P. Rule 62(b)

NONPROFIT CORPORATION ACT

- Actions by and against corporations
 - involuntary dissolution, commencement of action, 15-2353
 - survival of remedy after dissolution, 15-2362
- Amendment of articles of incorporation—See Articles of incorporation, amendments, below
- Annual reports of domestic and foreign corporations, 15-2381
 - failure to file, penalty, 15-2385
 - filing of report, 15-2382
 - fee for filing, 15-2383
- Appeal from ruling or decision of secretary of state, 15-2388
- Applicability of Religious Corporation Sole Act, 15-2402
- Application of act, 15-2303
- Articles of dissolution—See Dissolution, articles of dissolution, below
- Articles of incorporation
 - amendments
 - disapproval by secretary of state, appeal to district court, 15-2388
 - merger or consolidation of corporations, 15-2342
 - procedure to amend, 15-2334
 - right to amend, 15-2333
 - articles of amendment
 - certificate of amendment, issuance by secretary of state, 15-2336
 - effect of certificate, 15-2236
 - fee for issuing, 15-2383

INDEX

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)

Articles of incorporation (Continued)

articles of amendment (Continued)

execution by corporation, 15-2335

fee for filing, 15-2383

form and contents, 15-2335

disapproval by secretary of state, appeal to district court, 15-2388

fee for filing, 15-2383

filing of articles, 15-2330

foreign corporation, amendment to articles, filing, 15-2373

form and contents, 15-2329

greater voting requirements, effect, 15-2391

restated articles of incorporation, 15-2337

certificate of restatement, issuance

effect, 15-2337

fee, 15-2383

filing, fee, 15-2337, 15-2383

waiver of notice requirements, 15-2392

Books and records, 15-2325

Bylaws

adoption by board of directors, contents, 15-2312

power to alter, amend or repeal, 15-2312

definition, 15-2302

Certificate of incorporation

fee for issuing, 15-2383

issuance by secretary of state, 15-2330

effect of issuance, 15-2331

Committees of board of directors, appointment and powers, 15-2321

Consolidation—See Merger or consolidation, below

Definitions, 15-2302

Directors

bylaws, adoption, modification, 15-2312

committees, appointment and powers, 15-2321

consent to action taken without a meeting, 15-2393

election, 15-2318

false statements in documents, penalty, 15-2386

liquidation of assets and business of corporation, grounds for action, 15-2354

loans from corporation prohibited, 15-2327

management of corporation, 15-2317

meetings, place and notice, 15-2322

consent to action without a meeting, 15-2393

waiver of notice, 15-2322, 15-2392

nonliability for corporate obligations, 15-2311

number, 15-2318

listing in articles of incorporation, 15-2329

officers of corporation as ex officio members of board, 15-2323

organization meeting, 15-2332

qualifications, 15-2317

quorum, 15-2320

removal from office, 15-2318

survival of remedy after dissolution, 15-2362

term of office, 15-2318

vacancies, filling of, 15-2319

Dissolution

appeal from disapproval by secretary of state, 15-2388

articles of dissolution, 15-2349

execution, form and contents, 15-2349

fee for filing, 15-2383

filing with secretary of state, 15-2350

attorney general, notice from secretary of state as to corporations subject to involuntary dissolution, 15-2352

commencement of action and procedure, 15-2352

INDEX

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)

Dissolution (Continued)

- involuntary dissolution
 - grounds for, 15-2351
 - liquidation—See Liquidation, below
 - notice to attorney general by secretary of state of corporations subject to, 15-2352
 - venue and process, 15-2353
- survival of remedy after dissolution, 15-2362
- voluntary dissolution, 15-2345
 - articles of dissolution, filing, 15-2349, 15-2350
 - assets due unknown persons, deposit with state treasurer, 15-2361
 - certificate of dissolution, 15-2350
 - distribution of assets, 15-2346
 - plan of distribution, 15-2347
 - revocation of voluntary proceedings, 15-2348

Dividends prohibited, 15-2326

Enforcement by secretary of state, 15-2387

Evidence, certificates and certified copies issued by secretary of state to be received, 15-2389

Fees

- certified copies, 15-2384
- filing documents and issuing certificates, 15-2383, 15-2384

Foreign corporations

- actions by and against corporations, 15-2364
 - failure to obtain certificate of authority, effect of, 15-2380
 - service of process, 15-2372

admission of foreign corporation, 15-2363

annual report required, contents, 15-2381

failure to file, penalty, 15-2385

filing of report, 15-2382

fee, 15-2383

application of act, 15-2303

articles of incorporation, amendment, filing, 15-2373

filing fee, 15-2383

certificate of authority

amended certificate, requirements for securing, procedure, 15-2375

application fee, 15-2383

application, contents, execution, 15-2367

filing of application, 15-2368

failure to obtain certificate, effect, 15-2380

fee for issuing, 15-2383

issuance of certificate, effect, 15-2368, 15-2369

limitations on issuance, 15-2363

required to transact business in state, 15-2363

revocation of certificate of authority

appeal from secretary of state, 15-2388

grounds, 15-2378

issuance of certificate of revocation, 15-2379

definition, 15-2302

merger of foreign corporation authorized to do business in state, 15-2374

articles of merger, fee for filing, 15-2383

merger or consolidation with domestic corporations, 15-2343

name of corporation

change of name, 15-2366

reservation of right to exclusive use, 15-2309

restrictions on contents of name, 15-2365

powers of foreign corporation, 15-2364

registered agent required, 15-2370

change of registered agent, 15-2371

registered office required, 15-2370

change of registered office, 15-2371

service of process on foreign corporation, 15-2372

INDEX

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)

Foreign corporations (Continued)

- withdrawal of foreign corporation

- application for withdrawal, contents, 15-2376

- filing fee, 15-2383

- filing of application, 15-2377

- certificate of withdrawal, requirements for, issuance, 15-2376, 15-2377

- Foundations organized as nonprofit corporations, compliance with federal tax laws required, 15-2398

- charitable trusts treated as foundations under federal tax law, 86-707—See

CHARITABLE TRUSTS

- Health service corporations, 15-2304

Incorporation

- articles of incorporation—See Articles of incorporation, above

- certificate of incorporation, 15-2330, 15-2331

- Incorporators, 15-2328

- listing in articles of incorporation, 15-2329

- organization meeting, calling of, 15-2332

- Invalidity of part of act, effect of, 15-2397

Liquidation

- assets due unknown persons, deposit with state treasurer, 15-2361

- creditors, grounds for action for liquidation, 15-2354

- filing of claims and notice, 15-2357

- decree of dissolution

- effect of decree, 15-2359

- entry of decree by court, 15-2359

- filing of decree, 15-2360

- directors, grounds for action for liquidation, 15-2354

- discontinuance of proceedings, 15-2358

- grounds for liquidation of assets and business of corporation, 15-2354

- jurisdiction of district courts, 15-2354

- members, grounds for action for liquidation, 15-2354

- procedure

- liquidation by court, 15-2355

- voluntary dissolution, 15-2346, 15-2347

- receivers

- appointment by court, 15-2355

- authority of receivers, 15-2355

- compensation, 15-2355

- expenses, payment from assets or proceeds of sale, 15-2355

- qualifications, 15-2356

- Loans to directors and officers prohibited, 15-2327

Members

- classes of members, designation, election or appointment, qualifications, 15-2311

- consent to action taken without a meeting, 15-2393

- corporation may have no members, 15-2311

- definition, 15-2302

- liquidation of assets and business of corporation, grounds for action, 15-2354

- meetings

- annual meeting of members, time and place, 15-2313

- consent to action taken without a meeting, 15-2393

- quorum, 15-2316

- special meetings, 15-2313

- voting rights of members, 15-2315

- articles of incorporation to control, 15-2391

- written notice required, 15-2314

- waiver, 15-2392

- membership certificates, issuance by corporation, 15-2311

- nonliability for corporate obligations, 15-2311

- organization meeting, 15-2332

- survival of remedy after dissolution, 15-2362

Merger or consolidation

- appeal from disapproval by secretary of state, 15-2388

INDEX

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)

Merger or consolidation (Continued)

articles of merger or consolidation

execution by each corporation, 15-2341

filing in office of secretary of state, 15-2341

fee for filing, 15-2383

form and contents, 15-2341

certificate of consolidation

effect of issuance, 15-2342

issuance by secretary of state, 15-2341

fee, 15-2383

certificate of merger

effect of issuance, 15-2342

issuance by secretary of state, 15-2341

fee, 15-2383

consolidation, procedure for, 15-2339

domestic and foreign corporations, 15-2343

foreign corporation authorized to do business in state, filing of articles of merger, 15-2374

merger, procedure for, 15-2338

new corporation, rights and liabilities, 15-2342

plan for merger or consolidation

abandonment of plan, 15-2340

approval by members, 15-2340

separate existence of parties to plan ceases, 15-2342

surviving corporation, rights and liabilities, 15-2342

Name of corporation

reservation of right to exclusive use, 15-2307

fee for filing application, 15-2383

notice of transfer of reserved name, fee for filing, 15-2383

restrictions on contents of name, 15-2307

Officers, enumeration and general powers, 15-2323

appointment or election, 15-2323

ex officio members of the board of directors, 15-2323

false statements in documents, penalty, 15-2386

loans from corporation prohibited, 15-2327

nonliability for corporate obligations, 15-2311

removal from office, 15-2324

Organization meetings, notice, 15-2332

Powers of corporation

general powers enumerated, 15-2305

ultra vires as a defense, 15-2306

unauthorized assumption of corporate powers, 15-2394

Purposes for which organized, 15-2304

Receivers—See Liquidation, receivers, above

Registered agent required, 15-2308

change of registered agent, 15-2309

statement of change, fee for filing, 15-2383

listing in articles of incorporation, 15-2329

resignation of agent, 15-2309

Registered office required, 15-2308

change of registered office, 15-2309

statement of change, fee for filing, 15-2383

listing in articles of incorporation, 15-2329

Repeal of prior acts, effect of, 15-2396

Reports

annual report—See Annual reports of domestic and foreign corporations, above
forms to be prescribed by secretary of state, 15-2390

Reservation of power to amend, repeal or modify, regulatory act, 15-2395

Sale, lease, exchange, or mortgage of assets, 15-2344

Secretary of state

appeal from ruling or decision of secretary of state, 15-2388

INDEX

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)

Secretary of state (Continued)

- application to reserve corporate name, filing, 15-2307
- articles of amendment
 - certificate of amendment, issuance, effect, 15-2336
 - filing, 15-2335
- articles of dissolution, filing, certificate, 15-2350
- articles of incorporation, filing, 15-2330
- certificate of incorporation, issuance of, 15-2330, 15-2331
- certified copies, fees for issuing, 15-2384
- change of registered office or registered agent, filing of statement, 15-2309
- evidence, certificates and certified copies issued by secretary of state to be received, 15-2389
- fees for filing documents and issuing certificates, 15-2383, 15-2384
- foreign corporations
 - certificate of authority
 - amendment, procedure, 15-2375
 - issuance, 15-2368, 15-2369
 - revocation, 15-2378, 15-2379
 - merger, filing of articles, 15-2374
 - withdrawal, issuance of certificate, 15-2376, 15-2377
- forms for reports to be prescribed by secretary of state, 15-2390
- involuntary dissolution, notice to attorney general of corporations subject to, 15-2352
- merger or consolidation of corporations
 - articles of merger or consolidation, filing, 15-2341
 - certification, effect of, 15-2341, 15-2342
- power to administer act, 15-2387
- restated articles of incorporation, certification, 15-2337

Securities act, exempt securities, 15-2013

Service of process on corporation, 15-2310

foreign corporations, 15-2372

Shares of stock prohibited, 15-2326

Short title, 15-2301

Ultra vires as a defense, 15-2306

Unauthorized assumption of corporate powers, 15-2394

Waiver of notice requirements, 15-2392

NOTARIES PUBLIC

Deputy registrars, service as, 23-3003

NOTES

See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

NOTICES

Cancellation or nonrenewal of insurance on home, notice required, penalty for violation, 40-4415, 40-4416

Certified and registered mail, 19-122

Radio or television broadcast supplementing notice, 19-201

copy of transcript to be retained by broadcasting station, 19-202

proof of broadcast, 19-203

Uniform Probate Code

compromise agreements, 91A-3-1102

conservator, 91A-5-413

creditors, 91A-3-801

elective share of surviving spouse, notice in proceedings, 91A-2-205

fact of death in doubt, notice to last address of alleged decedent, 91A-3-403 (2)

foreign personal representative, 91A-4-303

formal appointment proceedings, 91A-3-414

formal testacy proceedings, 91A-3-403

guardians, 91A-5-208, 91A-5-305

informal appointment proceedings, 91A-3-310

informal probate, notice requirements, 91A-3-306

INDEX

References are to Title and Section numbers

NOTICES (Continued)

Uniform Probate Code (Continued)

- interested persons demanding notice, 91A-3-204, 91A-5-406
- method and time of giving notice, 91A-1-401
- order binding on all persons bound by notice, 91A-1-403
- order binding on all persons notified, 91A-3-106
- personal representative, 91A-3-602
- proof of notice, 91A-1-401 (3)
- represented persons bound by notice, 91A-1-403
- requirements for notice, 91A-1-403 (3)
- supervised administration, order for, 91A-3-502
- time of notice, 91A-1-401
- waiver, 91A-1-402

NUISANCES

- Gambling equipment, maintenance or possession as public nuisance, 94-8-409
- Public nuisance as criminal offense, definition, punishment, 94-8-107
 - abatement of nuisance, procedure, 94-8-107(5)
- Sanitary deficiencies in public buildings as nuisance, 69-4118

NURSERIES AND NURSERYMEN

See AGRICULTURE, Nurseries and nurserymen

NURSES

Board of nurses

- administrative services provided by department, 82A-1603
- allocation to department for administrative purposes, 82A-1602
- appointment, qualifications, removal and terms of members, 82A-1602.18
- attorney general as legal counsel, additional counsel authorized, 66-1223(3)
- compensation and expenses of members, 66-1226
- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.18
- legal assistance in hearings by boards, 82A-1604
- moneys received by board, disposition, 66-1237
- organization, duties and powers, 66-1225
 - dual administrations exclusive of each other, separation of records, 66-1225
- records and files kept by department, open to public inspection, 66-1223
- retention of functions by board, 82A-1605
- seal of board, required inscription, 66-1223

Child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS,
Abuse of children

Criminal offenders, licensing of, 66-4001 to 66-4005—See LICENSURE OF CRIM-
INAL OFFENDERS

Employment practices

- bargaining units, 41-2204 to 41-2207
- definitions, 41-2202
- determination of composition of bargaining unit, 41-2204, 41-2206, 41-2207
- improper employment practices, 41-2203
 - injunctive and other relief, 41-2208
- institution of proceedings against improper practices, 41-2208
- purpose of act, 41-2201
- strikes, when unlawful, 41-2209

Gunshot or stab wounds to be reported to law enforcement officials, 66-1050
immunity from liability, 66-1051

License to practice nursing

- endorsement without examination of licensee of another state, 66-1228
- fees
 - disposition of fees, 66-1237
 - endorsement without examination, 66-1229
 - practical nurse license, 66-1234
 - renewal fee, 66-1236

INDEX

References are to Title and Section numbers

NURSES (Continued)

License to practice nursing (Continued)

- lapse of license by failure to renew, 66-1236
- renewal of license, fee, 66-1236

Malpractice, statute of limitations, 93-2624

Midwives, qualifications for persons to practice as, 66-1246

- certificate issued by board to qualified persons, 66-1246(1)
- certificate of American College of Nurse-Midwives as qualification to practice upon approval of board, 66-1246
- temporary approval to practice pending notice of result of examination, 66-1246(2)

Visiting nurses, employment by local boards, 69-4512

NURSING HOMES

Administrators

board of nursing home administrators

- administrative services provided by department, 82A-1603
- allocation to department for administrative purposes, 82A-1602.17
- appointment, qualifications, removal and terms of members, 82A-1602.17
- compensation and expenses of board members, 66-3107
- continuation in office of board members, exception, 82A-1606
- definition of terms, 66-3101
- employment of personnel for board, 82A-1604
- exclusive jurisdiction of board, 66-3108
- existence and composition of board, 82A-1602.17
- legal assistance in hearings by board, 82A-1604
- organization of board, 66-3107
- powers and duties of board, 66-3109, 82A-1605
- retention of functions by board, 82A-1605

fees collected by department, deposit, use by board, 66-3106

- licensure, 66-3103 to 66-3105, 66-3110, 66-3111
- reciprocity with other states, licensing without examination, 66-3111
- unlicensed administering a misdemeanor, 66-3112

malpractice, limitation of actions, 93-2624

Center for the aged, 80-2501 to 80-2503—See CENTER FOR THE AGED

County operation of home, 16-1037

- services provided at county-operated home, 16-1038

Fire regulations applicable, 69-1802

Joint county institutions authorized, 16-1040

- definition of terms, 16-1039
- terms of contract between counties, 16-1041

Lease of county property for home, 16-1036

Long-term care facilities, 69-5201 to 69-5221—See LONG-TERM CARE FACILITIES

Tax exemption when operated not for profit, 84-202

O

OATHS

Constitutional oath of office, 1972 Const., III, 3

- False swearing as criminal offense, punishment, 94-7-203
- incompetency of declarant not a defense, 94-7-202(4)
- inconsistent statements, proof that one is true not required, 94-7-202(6)
- irregularity of oath or affirmation not a defense, 94-7-202
- retraction of falsification, effect, 94-7-202(5)
- testimony of single person insufficient for conviction, 94-7-202(7)

Officers of organized militia, 77-1702, 77-1802

Uniform Probate Code, filed documents deemed to include oath, affirmation or authenticating statement, 91A-1-309

OBSCENE CONDUCT

Acts constituting criminal offense, punishment, 94-8-110(1)(4)

INDEX

References are to Title and Section numbers

OBSCENE CONDUCT (Continued)

- Contraceptive drugs or devices, prohibited methods of display and distribution, punishment, 94-8-110.2
- Definition of offense of obscenity, 94-8-110(2)
- Evidence admissible in prosecution, 94-8-110(3)
- Public display of offensive sexual material, acts constituting offense, punishment, 94-8-110.1
 - theaters, prohibited displays, 94-8-110.1(2)
- Telephone communication, punishment, 94-8-114

OBSTRUCTING JUSTICE

- Definition, elements, punishment, 94-7-303

OCCUPATIONAL DISEASE ACT

- Administration of act, 92-1302
- Aggravation of occupational disease by other disease, 92-1326
- Agreement by employee to waive compensation void, 92-1330
- American experience table of mortality, use, 92-1349
- Arise out of employment, when disease deemed to, 92-1305
- Attachment, compensation exempt from, 92-1329
- Attorney general, duties, 92-1343
- Attorney's compensation, 92-1323
- Autopsy, 92-1318
 - expenses, 92-1320
- Benefits
 - burial expenses, 92-1324
 - compensation payable under act same as under workmen's compensation act, 92-1321
- "Black lung" disease—See Pneumoconiosis, below
- Books, records and payrolls of employers to be open for inspection, 92-1358
- Burial expenses, 92-1324
- Claims
 - filing, 92-1312
 - forms, 92-1346
 - time for presenting, 92-1312
- Common law defenses not available, 92-1339
- Common law right of action prohibited against employer electing to come under act, exceptions, 92-1331
- Compensation
 - amount of benefits and time period, same as workmen's compensation act, 92-1321
 - assignment, limitation, 92-1329
 - date for beginning of payment of compensation under act, 92-1338
 - determination of amount of compensation and time and method of payment, 92-1336
 - diminution because of payments under workmen's compensation act, 92-1333
 - exceptions, 92-1311
 - exemption from attachment, garnishment and execution, 92-1329
 - false representation by employee as preventing, when, 92-1342
 - liability of employer for, 92-1366
 - limitations, 92-1311
 - methods for employers to secure compensation to their employees, 92-1334
 - partial disability, no compensation for, 92-1322
 - payment, 92-1311
 - payments due to child under 18 years of age or incompetent, 92-1337
 - persons receiving public welfare benefits not entitled to compensation, 92-1332
 - vested rights in prohibited, 92-1367
 - willful misconduct, self-exposure or disobedience of orders as precluding compensation, 92-1328
- Compensation plans, 92-1334
- Construction of act, 92-1368
- Costs and disbursements in proceedings and hearings, 92-1357

INDEX

References are to Title and Section numbers

OCCUPATIONAL DISEASE ACT (Continued)

Death

- autopsy, 92-1318
- expenses, 92-1320
- burial expenses, 92-1324
- disease other than silicosis as cause, report of member of medical committee, 92-1317
- notice of, 92-1313
- silicosis as cause of death, report of pulmonary specialist, 92-1316

Deduction from wages of part of premium constitutes misdemeanor, 92-1341

Defenses not available to employer, 92-1339

Definitions, 92-1303

Diseases which constitute occupational diseases, enumeration, 92-1304

Division of workers' compensation to administer act, 92-1302

- amount and time of payment of compensation determined by division, 92-1336
- claim forms prescribed, 92-1346
- hearings, findings and awards, 92-1335
- powers necessary and convenient, authority to exercise, 92-1352
- right to sue and be sued, 92-1344
- rules and regulations, adoption, 92-1345
- service of process on division, 92-1344

Employees

- agreement to waive compensation or pay premium void, 92-1330
- applicants for employment who upon medical examination are found afflicted with occupational disease, employer not liable, when, 92-1330
- right of employee to reject provisions of act, notice of, posting, 92-1309

Employers

- books, records and payrolls to be open to inspection, 92-1358
- compensation plan No. 1, direct payment to employee, 92-1334
- compensation plan No. 2, insuring liability, 92-1334
- compensation plan No. 3, occupational disease compensation account, 92-1334
- deducting from wages part of premium, misdemeanor, 92-1341
- liability for payment of compensation, 92-1366
- liability where person employed by successive employers, exception, 92-1310

Evidence, certificate and certified copies as, 92-1356

Execution, compensation exempt from, 92-1329

False representation by employee as to prior diseases, effect, 92-1342

Garnishment, compensation exempt from, 92-1329

Hearings after receipt of notice and medical report, 92-1315

Hearings, findings and awards by board, 92-1335

Lump sum settlements

- exception as to amount of attorney's compensation, 92-1323
- prohibition against, 92-1323

Medical and hospital expenses, 92-1325

Medical examination

- cost, payment, 92-1320
- periodic medical examination, 92-1319
- procedure, 92-1315
- re-examination, 92-1315
- report, 92-1315

Medical panel

- appointment, 92-1314
- composition, 92-1314
- medical association, certifying nominees, 92-1314

Notice of disability or death, time for giving, 92-1313

Notice of employee's right to reject provisions of act, posting of, 92-1309

Occupational disease compensation account, 92-1334

"Occupational disease" defined, 92-1304

Partial disability, no compensation for, 92-1322

Payments due to child under 18 or to person adjudged incompetent, method of making, 92-1337

Periodic medical examinations, 92-1319

Persons receiving benefits under public welfare act not entitled to compensation benefits, 92-1332

INDEX

References are to Title and Section numbers

OCCUPATIONAL DISEASE ACT (Continued)

Persons subject to act, 92-1307

Pneumoconiosis

benefit payments, 92-1321

definition, 92-1303

medical definition of totally disabling pneumoconiosis, 92-1315.1

liability of last employer, 92-1310

presumptions as to death or disablement, 92-1303

standards for determining death or total disability, medical examination, 92-1315

time for presenting claims, 92-1312

Prevention of occupational disease, 69-4206 to 69-4221—See OCCUPATIONAL HEALTH

Proximate causation of occupational disease, 92-1305

Radiation sickness, time for filing notice of claim, 92-1311, 92-1313

Regular employees, 92-1306

Reports by physicians and hospitals of occupational diseases, 69-4204

Rights to compensation under act exclusive remedy, when, 92-1308

Short title, 92-1301

Silicosis as cause of death, report of pulmonary specialist, 92-1316

Silicosis with complication of tuberculosis, 92-1327

Subcontractors, 92-1306

Successive employers, 92-1310

Violation of act, penalties, 92-1340

Willful misconduct, willful self-exposure or disobedience precludes compensation, 92-1328

OCCUPATIONAL HEALTH

Access to premises for inspection, 69-4213

Administration by department of health and environmental sciences, 69-4209

powers and duties of department, 69-4211.1

Advisory committee abolished, 82A-1011

Board of health and environmental sciences, powers and duties generally, 69-4211

Citation of act, 69-4206

Confidentiality of records, 69-4219

Damage actions, remedies unaffected, 69-4221

Definition of terms, 69-4208

Director of occupational health program, appointment and functions, 69-4209

Emergency orders to protect health, 69-4216

Emission of pollutants, standards for, 69-4214

Enforcement proceedings, 69-4215

hearings and judicial review, 69-4218

Exemptions from requirements, 69-4217

Federal grants, acceptance and administration, 69-4211, 69-4220

Hearings by board, 69-4211

Informational activities of department, 69-4211.1

Inspection of premises, 69-4213

Orders by board, 69-4211

Penalties for violations, 69-4221

Permits for machinery and equipment, application for and issuance, 69-4212

Plans for prevention of disease, 69-4211

Policy and purpose of act, 69-4207

Records confidential, 69-4219

Rehearings on board orders, 69-4218

Reports by physicians and hospitals of occupational diseases, 69-4204

Rules implementing act, 69-4211

hearings before promulgation of rule, 69-4218

Standards for emission of pollutants, 69-4214

Studies and research by department, 69-4211.1

Variances from requirements, 69-4217

Violation of requirements

civil remedies unaffected, 69-4221

emergency orders, 69-4216

INDEX

References are to Title and Section numbers

OCCUPATIONAL HEALTH (Continued)

- Violation of requirements (Continued)
 - hearings on alleged violations, 69-4215
 - order for corrective action, 69-4215
 - penalties for violations, 69-4221

OIL AND GAS

- Abandoned wells and other land disturbances not in compliance with reclamation rules, reclamation procedures, 60-149
- Abandonment and plugging of oil or gas well, notice required, rights of owner, regulations of board, 60-901
- Assessment on crude petroleum and natural gas production, rate, return of producer, payment, disposition of funds, 60-145
- Board of oil and gas conservation created, composition, allocation, designation as quasi-judicial board, 82A-1508
 - abandonment and plugging of oil and gas well, regulation, 60-901
 - Administrative Procedure Act, application to board procedures, 60-132, 60-133
 - co-operation with other governmental agencies, 60-141
 - facilities, equipment, records and samples made available to bureau of mines and geology, 60-148
 - powers and duties of board, 60-127
 - procedures of board generally, 60-132, 60-133
 - rehearing, application, time of filing, 60-134
 - review of board rule or order by injunction proceedings, procedure, relief afforded, 60-135
 - appeal to supreme court from adverse ruling, 60-135(4)
 - subpoena power of board, 60-133
 - violations, 60-136, 60-142
 - injunction available to prevent violation, 60-136
 - misdemeanor, penalty, 60-142
- Cores, chips, or cuttings from drilling to be made available to board, time for, confidentiality, exceptions, 60-144
 - bottom-hole temperatures as public information, 60-144 (3)
 - samples and bottom-hole temperatures furnished to bureau of mines and geology, 60-148
 - samples furnished to bureau of mines and geology, 60-148
- Drilling permit required, fees, 60-145
- Earmarked revenue fund, deposits and use of fund, 60-145
- Federal lands, royalties used for school equalization aid, 75-6916
- Lien on well, priority and filing of statement, 45-1003
- Real estate brokers' license act inapplicable to dealings in mineral interest, 66-1926
- Resource indemnity trust account tax, 84-7001 to 84-7013—See TAXATION
- Review of orders of board, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
- Seismic exploration, notice required, filing, 60-128
- Severance tax, 84-2201 to 84-2211—See TAXATION, Oil or gas producers severance tax
- Stratigraphic test well, bottom-hole temperatures for geothermal purposes to be provided board, 60-144 (2), (3)
 - bottom-hole temperatures as public information, 60-144 (3)
- Underground storage reservoirs
 - "board" defined, 60-801
 - certificate of board required, hearing, notice, 60-804
- Unit operation of pool
 - acquisition of property to be for account of owners within unit area, 60-131.11
 - acts constituting compliance with board order, presumptions, 60-131.8
 - allocation of production and income to owners of tracts, 60-131.9
 - amendment of board order, conditions, 60-131.5
 - anti-trust laws not applicable, 60-131.12
 - approval by persons paying cost and owning production required, revocation of order upon failure of approval, 60-131.4
 - contracts for sale or purchase of production unaffected by unit operation, 60-131.10
 - criteria for approval of unit operation, 60-131.2

INDEX

References are to Title and Section numbers

OIL AND GAS (Continued)

Unit operation of pool (Continued)

- hearing by board required, 60-131.1
- lien on income for operating costs, 60-131.9
- order for unit operation, terms and conditions, 60-131.3
- previously established units, inclusion, 60-131.6
- purpose of unit operation, 60-131.1
- title to oil and gas rights unaffected, 60-131.11

Waste of oil and gas prohibited, 60-127.1

OPEN MEETINGS

Local government commissions, open meetings required, 16-5111, 16-5119(6)

Meetings of public agencies, 82-3401 to 82-3403

- legislative intent, 82-3401
- meetings to be open, exceptions, 82-3402
- minutes to be available for public inspection, 82-3403

OPEN-SPACE LAND AND CONSERVATION EASEMENTS

See PARKS, Open-space land

OPERATORS' AND CHAUFFEURS' LICENSES

Agents for issuance of licenses, 31-135

Driving under influence, mandatory suspension or revocation, 31-149

Epileptic seizures, restrictions on issuance to persons subject to, 31-127

Expiration date of license, 31-135

Fee payable for license, 31-135

Forfeiture of bail on motor vehicle offense, return of license to board, 31-145

revocation of license, 31-146

Habitual offender, revocation of license, 31-184.1

certification of case to district court for trial, 31-188

Identification cards for unlicensed persons, 31-170 to 31-174

Implied consent to alcohol test, 32-2142.1 to 32-2142.3—See MOTOR VEHICLES,

Driving under influence

Interstate compact, text and enactment, 31-163

governor designated as executive head, 31-166

highway patrol board designated as licensing authority, 31-164

judicial review of actions pursuant to compact, 31-169

offenses furnishing grounds for suspension or revocation of license, 31-168

reimbursement of compact administrator, 31-165

report to highway patrol of suspension or revocation of license, 31-167

Issuance of license, 31-135

Motorcycle endorsement required, examination, qualifications, 31-134 (a)

fee for endorsement, 31-135 (f)

issuance without examination to existing license holders, requirements, 31-134 (d)

subsequently issued licenses invalid without endorsement, 31-135 (e)

Person holding chauffeur's license not to have operator's license, 31-125

Photograph to be included in license, 31-135

Possession of more than one license prohibited, 31-135

Probationary licenses, issuance, 31-147

Provisional license, designation and suspension, 31-135

Revocation or suspension, child under 18 unlawfully operating motor vehicle, 32-21-163

Roadblocks, authority of officers to check for driver's licenses, 95-618

School bus drivers, qualifications for, 75-7003

Schools, driver training administered by, 75-7901 to 75-7907—See SCHOOLS, Traffic

education

Issuance of license after completion of course, 31-127

Snowmobile operation, when license required, 53-1018

Surrender of foreign license on licensing in Montana, 31-125

Testing of applicants for renewal, 31-135

OPTOMETRY

Board of optometrists

administrative services provided by department, 82A-1603

INDEX

References are to Title and Section numbers

OPTOMETRY (Continued)

Board of optometrists (Continued)

- allocation to department for administrative purposes, 82A-1602
- appointment, qualifications and terms of members, 82A-1602.19
- attorney general to represent board in supreme court, 66-1315
- compensation and expenses of members, 66-1311
- continuation in office of board members, 82A-1606
- definition of terms, 66-1301.1
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.19
- legal assistance in hearings by board, 82A-1604
- meetings of board, 66-1304
- oaths administered and affidavits taken by officers, 66-1304
- officers of board, annual selection, 66-1304
- records of proceedings kept by department, open to public inspection, 66-1304
- report of board, 66-1311
- retention of functions by board, 82A-1605
- rules, adoption by board authorized, 66-1303
- seal of board, 66-1303(2)

Continuing education required for renewal of license, 66-1318

Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS

Criminal offenders, licensing, 66-4001 to 66-4005

Disability insurance, freedom of choosing physician, 40-4108, 40-4109

Fee for renewal of registration, 66-1307

Malpractice, statute of limitations, 93-2624

Money collected by department deposited in earmarked revenue fund for use of board, 66-1311

Public agencies, acceptance of services of licensed optometrist, 66-1317

Renewal of registration, 66-1307

Revocation of certificate, notice and hearing required, 66-1312

Violations

- injunction on relation of board of examiners, 66-1302
- penalty for, 66-1314
- prosecution of, 66-1315

ORDERS

Application for order to be by motion, M. R. Civ. P., Rule 7(b)

Exceptions to orders of court unnecessary, M. R. Civ. P., Rule 46

Mistaken order, grounds and procedure for relief from, M. R. Civ. P., Rule 60

Pre-trial conference, order issued after, M. R. Civ. P., Rule 16

Process used for enforcement for and against persons not parties, M. R. Civ. P., Rule 71

Service on parties, when required, M. R. Civ. P., Rule 5(a)

OSTEOPATHY

Acupuncture, license required for practice of, 66-3401 to 66-3417—See ACUPUNCTURE

Board of medical examiners, representation on, 66-1013

Board of osteopathic physicians

- administrative services provided by department, 82A-1603
- allocation to department for administrative purposes, 82A-1602
- appointment, qualifications and terms of members, 82A-1602.20
- compensation and expenses of members, 66-1410
- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.20
- fees received by board, deposit and use, 66-1410
- legal assistance in hearings by board, 82A-1604
- meetings of board, maximum duration, 66-1402(3)
- oaths administered by officers, 66-1402(1)
- officers, election, 66-1402(1)
- record of proceedings kept by department, 66-1402(5)
- report by board to governor, 66-1410

INDEX

References are to Title and Section numbers

OSTEOPATHY (Continued)

Board of osteopathic physicians (Continued)
retention of functions by board, 82A-1605
seal of board, 66-1402(1)

Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS

Criminal offenders, licensing, 66-4001 to 66-4005

Definition of terms, 66-1401.1

Disability insurance, freedom of choosing physician under disability insurance, 40-4108, 40-4109

Drug trade prohibited to practitioners, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners

Examination of applicants for certificate of qualification, duties of department, 66-1402

Fees, deposit and disposition, 66-1410(2)

Gunshot or stab wounds to be reported by practitioners, 66-1050
immunity from liability, 66-1051

License, issuance after examination, 66-1405

Malpractice, statute of limitations, 93-2624

Reciprocity licensing, examination required, 66-1025

OUTDOOR RECREATIONAL RESOURCES

Fish and game commission as agent to implement federal act, 62-402
powers of commission, 62-403

Purpose of act, 62-401

P

PAINTS AND PAINT PRODUCTS

Certificate of analysis as presumptive evidence, 90-703

County attorney, duties, 90-704

Enforcement by department, 90-702

Intrastate transactions, application of law, 90-701

Laboratory for analysis, designation by department, 90-703

Penalty for violations, 90-706

Possession of improperly labeled products as prima facie evidence, 90-705

PARDONS

See PROBATION, PAROLE AND CLEMENCY

PARENT AND CHILD

Adopted person inherits as child of adopting parent, 91A-2-109

included in class gift terminology and terms of relationship, 91A-2-611

Delegation of power by parent, formal requirements, 91A-5-104

Force used by parent to restrain or correct child, when justified, 94-3-107

Gambling losses, actions for recovery by dependent, 94-8-418 to 94-8-421—See GAMBLING

Illegitimate child, succession rights, 91A-2-109, 91A-2-611

Interference with custody of child, elements of offense, punishment, 94-5-305

Liability of parent for willful destruction of property by child, 61-112.1

amount of recovery, 61-112.2

attorney's fee, 61-112.2

"Parent" defined, 91A-1-201 (29)

Spouse's children by former marriage, married person not liable for support of, 61-117

Testamentary appointment of guardian by parent, 91A-5-202

Uniform Parentage Act

birth records, new certificate substituted consistent with findings of court, 61-324
custodial proceedings, 61-325, 61-326

determination of custody by court, 61-326

mother relinquishing or proposing to relinquish child for adoption, 61-325
(1), (2)

natural father, inquiry by court to identify, evidence considered, procedure, 61-325 (3) to (5)

notice of proceeding, proof, when publication ordered, 61-325 (6)

INDEX

References are to Title and Section numbers

PARENT AND CHILD (Continued)

Uniform Parentage Act (Continued)

- definition of relationship, 61-302
- establishment of relationship, 61-304
- father and child relationship, action to establish, 61-305 to 61-321
 - action as civil action, rules of civil procedure govern, 61-315 (1)
 - action brought before birth of child stayed until after birth, 61-307
 - appeal, transcript furnished to party unable to pay, 61-320
 - artificial insemination of wife with consent of husband, 61-306
 - blood tests, when ordered, 61-312, 61-314
 - costs, assessment by court, 61-317
 - counsel, right of parties to, appointment for party unable to pay, 61-320
 - enforcement of judgment or order, 61-318
 - evidence relating to paternity, 61-313, 61-315
 - hearings and records, confidentiality, 61-321
 - judgment or order, effect, 61-316
 - jurisdiction and venue, 61-309
 - modification of judgment or order, 61-319
 - parties to action, 61-310
 - paternity, when presumed, 61-305
 - persons who may bring action, 61-307
 - pre-trial proceedings and recommendations, 61-311, 61-314
 - sexual access to mother by man other than husband, admissibility of evidence of, 61-315
 - time limitations for bringing action, 61-308
- hearings and records, confidentiality, 61-321
- mother and child relationship, action to determine, 61-322
 - provisions relating to father and child relationship applicable, 61-322
- promise by alleged father to render support, enforceability, confidentiality, 61-323
- relationship not dependent on marriage, 61-303
- short title, 61-301
- uniformity of application and construction of act, 61-327

PARKING FACILITIES

Meters, use of device to open or break meter to commit larceny unlawful, penalty, 94-35-249

Off-street parking facilities in cities

- improvement districts, authority to create, 11-2201
- assessments and bonds, 11-2214.2
- bonds, authority of district to issue, 11-2214.1
- leasing of real property, 11-2214.4
- payment of assessments, 11-2214.3
- resolution of intention, publication and adoption, 11-2214.5

PARKS

Counties

- board of park commissioners
 - acceptance of federal aid, 16-4807
 - accounts and records, 16-4801
 - commissioners, qualifications and terms, 16-4801, 16-4804
 - compensation of commissioners, 16-4804
 - execution of contracts, 16-4804
 - failure of commissioner to attend meetings, vacancy in office, 16-4804
 - funds, receipt and disbursement, 16-4803
 - auditing and allowance of claims, 16-4805
 - interest of commissioner in contracts of board prohibited, 16-4804
 - meetings, 16-4801, 16-4804
 - minute book, record of proceedings, 16-4801
 - notice of special meetings, 16-4804
 - officers of the board, duties, 16-4801
 - powers and duties of board, 16-4802
 - quorum for the transaction of business, 16-4804
 - secretary to board, employment and duties, 16-4801.1
 - vacancies on board, filling of, 16-4804

INDEX

References are to Title and Section numbers

PARKS (Continued)

Counties (Continued)

- claims against county, allowance, 16-4805
- county land donated for park purposes, 16-1131
- disbursement of park funds, 16-4803
- discrimination in employment prohibited, 16-4806
- federal aid, conditions, 16-4807
- park fund, separate fund in county treasury, 16-4803
- restricted liability for expenditures, 16-4803
- superintendent of parks, employment and duties, 16-4801.1

Gasoline tax moneys allocated for park improvement, 32-2601

Open-space land, 62-601 to 62-618

- acquisition and designation of land, 62-604
- comprehensive planning, commission authorized, 62-607
- conservation easement, acquisition as one purpose of act, 62-602
 - assignability, 62-613
 - construction generally, 62-618
 - definition, 62-603 (e)
 - easement runs with land, enforceability, 62-612
 - enforcement of easement by injunction or equity proceedings, 62-616
 - inconsistent laws superseded, 62-617
 - private organizations, acquisition of easement by, 62-611
 - public body, acquisition of easement by, 62-604
 - recording, description of land required, 62-615
 - review of easement by local planning authority, time allowed, 62-614
 - severability of provisions, 62-617
 - taxation of land subject to easement, 62-608
 - types of easements prohibited, 62-610

conversion or diversion of open-space land, 62-605

definition of terms, 62-603

"open-space land" defined, 62-603

powers of public bodies, 62-606

purposes of law, 62-602

servitude attached to land conserving open-space authorized, 67-601

servitude not attached to land, 67-602 (7)

Outdoor recreational resources, development, 62-401 to 62-403—See OUTDOOR RECREATIONAL RESOURCES

State parks

fees and charges, disposition and use, 62-305

fish and game commission vested with control, 62-301

powers and duties enumerated, 62-304

injury to park property, penalty, 62-314

scientific and recreational park, establishment authorized, 62-310

rules and regulations, 62-311

violation of rules and regulations, penalty, 62-314

PARTIES

Administrators need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)

Assignee of claim as plaintiff, defenses available against, 93-2802

Capacity to sue or be sued determined by statute, M. R. Civ. P., Rule 17(b)

Class actions, M. R. Civ. P., Rule 23(a)

Counterclaim requiring addition of parties, M. R. Civ. P., Rule 13(h)

Cross-claim requiring addition of parties, M. R. Civ. P., Rule 13(h)

Death of party, substitution of representative, M. R. Civ. P., Rule 25(a)

Executor need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)

Guardians need not join wards as parties, M. R. Civ. P., Rule 17(a)

Incompetent persons, representation in actions, M. R. Civ. P., Rule 17(c)

substitution of guardian in pending action, M. R. Civ. P., Rule 25(b)

Interpleader by joinder or substitution, M. R. Civ. P., Rule 22

Interrogatories to parties, M. R. Civ. P., Rule 33

Intervention, M. R. Civ. P., Rule 24

INDEX

References are to Title and Section numbers

PARTIES (Continued)

Joinder of parties

- form for allegation of reason for omission of necessary party, M. R. Civ. P., Appendix of Forms, Form 22
- interpleader, M. R. Civ. P., Rule 22(a)
- misjoinder, effect and correction, M. R. Civ. P., Rule 21
- nonjoinder, effect and correction, M. R. Civ. P., Rule 21
- permissive joinder, M. R. Civ. P., Rule 20(a)
- required joinder, effect of failure to join, M. R. Civ. P., Rule 19
- separation of trials, M. R. Civ. P., Rule 20(b)
- short title, 62-601
- tort action against employee of governmental entity, joinder of entity required, 82-4323

Married persons, 93-2803, 93-2804

Minors, representation in actions, M. R. Civ. P., Rule 17(c)

Mortgage foreclosure, necessary parties to, 93-6001

Motion on failure to join indispensable party, M. R. Civ. P., Rule 12(b)

Part of defendants served, proceeding against, M. R. Civ. P., Rule 4 D(10)

Physical and mental examinations, compelling submission, M. R. Civ. P., Rule 35

Public officers, substitution of successor, M. R. Civ. P., Rule 25(d)

Real party in interest, action to be prosecuted in name of, M. R. Civ. P., Rule 17(a)

State bringing action for use or benefit of another, M. R. Civ. P., Rule 17(a)

Substitution of parties, M. R. Civ. P., Rule 25

interpleader, substitution by, M. R. Civ. P., Rule 22(b)

Third-party practice, M. R. Civ. P., Rule 14

Transfer of interest, substitution of successor, M. R. Civ. P., Rule 25(c)

Trustee need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)

Unauthorized insurers, actions by prohibited, 40-3402

PARTITION

Personal property

county in which action to be brought, 93-6301.1

partition or sale authorized, 93-6301.1

procedure, 93-6301.2

Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

Two or more heirs or devisees of undivided interest, procedure, 91A-3-911

PARTNERSHIPS

Execution against partnership interest, 93-5811

Service of process on partnerships, M. R. Civ. P., Rule 4 D(2)

Workmen's compensation coverage of member, 92-411

PASSENGER TRAMWAYS

Appeal to district court, 69-6614

Common carrier, tramway not considered, 69-6615

Damage to tramway unlawful, 69-6616

misdemeanor, 69-6617

Dangerous use of tramway unlawful, 69-6616

misdemeanor, 69-6617

Definition of terms, 69-6602

Employment of personnel, 69-6610

Hearings, 69-6610

Injunction to compel compliance with requirements, 69-6613

Inspection of tramways, 69-6611

certificate of registration, inspection before issuance, 69-6607

Orders for corrective actions, 69-6612

remedies to enforce compliance, 69-6613

Policy of state, 69-6601

Public utility, tramway not considered, 69-6615

Registration required before operation of tramway, 69-6605

application for annual registration, 69-6606

certificate of registration, issuance and display, 69-6607

INDEX

References are to Title and Section numbers

PASSENGER TRAMWAYS (Continued)

Registration required before operation of tramway (Continued)

denial or revocation of registration, 69-6610

expiration of registrations, 69-6607

fees for registration, 69-6608

deposit of fees in earmarked revenue fund, 69-6609

inspection to determine compliance with requirements, 69-6607

supplemental application for new tramway, 69-6607

suspension of registration for failure to comply with requirements, 69-6613

Rules and regulations governing tramway construction and operation, 69-6610

Violations, prosecution, 69-6610

PATERNITY

See PARENT AND CHILD, Uniform Parentage Act

PATROL SERVICE

See PRIVATE INVESTIGATORS AND PATROL OPERATORS

PAWNBROKERS AND JUNK DEALERS

Military property, purchase, pledge or pawn as misdemeanor, 77-2107

Receiving or purchasing goods from child as criminal offense, punishment, 94-5-609

(1)(c)

Secured transactions, application of law to, 87A-9-203

PAYMENT

Affirmative defense, M. R. Civ. P., Rule 8(c)

Voluntary partial payment of damage claim, effect, 93-2201-7 to 93-2201-10

PEACEABLE ASSEMBLY

Freedom of assembly, 1972 Const., II, 6

PEACE OFFICERS

Arrests, 95-608—See ARRESTS, Peace officer

Bingo authorized, enforcement duties, 62-711—See GAMBLING, Bingo and raffles

Card games, enforcement duties, 62-711—See GAMBLING, Card games

Criminal investigator, position within office of attorney general, 82-414 to 82-420—See

CRIMINAL INVESTIGATION DIVISION

Definition, Criminal Code, 94-2-101(43)

Escape from custody, use of force to prevent, 94-3-106

Failure to aid officer, elements of offense, punishment, 94-7-304

False reports to peace officers as criminal offense, punishment, 94-7-206

Fish and game laws, enforcement by officers, 26-114

Gambling

arrest of person in possession or control, 94-8-410

breaking and entering gambling place, 94-8-413

complaint, duty to make, 94-8-414

failure as cause for removal from office, 94-8-414, 94-8-416

moneys seized by officer, disposition, 94-8-412

seizure of equipment authorized, 94-8-410

Impersonating officer or public servant, punishment, 94-7-210

Law enforcement academy, 75-5201 to 75-5208—See COLLEGES AND UNIVERSITIES, Law enforcement academy

License plates and certificates of registration, issuance by attorney general without public disclosure, restrictions, 82-424

Machine guns, inspection of manufacturer's stock and registration, 94-8-207—See FIREARMS

Mistreatment of prisoners, elements of offense, punishment, 94-8-113

Obstructing peace officer, punishment, 94-7-302

illegal action of officer no defense, 94-7-302(2)

Qualifications of, 16-3705

Raffles, enforcement duties, 62-711—See GAMBLING, Bingo and raffles

Reports of accidents investigated, 32-1208

INDEX

References are to Title and Section numbers

PEACE OFFICERS (Continued)

Residence requirements, 16-3705

Resisting arrest, elements of offense, punishment, 94-7-301
force to resist unlawful arrest unauthorized, 94-3-108
unlawful arrest unavailable as defense, 94-7-301(2)

Roadblocks, arrests at, 95-618

Sports pools, enforcement duties, 62-732—See GAMBLING, Sports pools

Teletypewriter communications system, 82-3901 to 82-3906—See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS

PEDESTRIANS

Rendering pedestrian traffic impassable as disorderly conduct, punishment, 94-8-101

PERISHABLE PROPERTY

Carrier may sell, when, 8-819

PERJURY

Definitions, 94-2-101, 94-7-201

Elements of offense, 94-7-202(1)

False swearing, 94-7-203—See OATHS

Falsification in official proceeding as element of offense, 94-7-202(1)

Incompetency of declarant not a defense, 94-7-202(4)

Inconsistent statements, proof that one is true not required, 94-7-202(6)

Irregularity of oath or affirmation immaterial, 94-7-202(4)

Materiality of falsification as question of law, 94-7-202(3)
definition, 94-7-202(3)

Punishment, 94-7-202(2)

Retraction of falsification, effect, 94-7-202(5)

Testimony of single person insufficient for conviction, 94-7-202(7)

PERPETUITIES

Prohibition against perpetuities except for charitable purposes, 1972 Const., XIII, 6

PERSONAL REPRESENTATIVES

Acceptance of appointment as submission to jurisdiction of court, 91A-3-602

Appointment of personal representative

duration of appointment, 91A-3-610 (1)

formal proceedings, 91A-3-414

informal proceedings, 91A-3-301, 91A-3-307 to 91A-3-311—See PROBATE AND ADMINISTRATION PROCEEDINGS, Informal appointment proceedings

priority among persons seeking appointment, 91A-3-203

required for administration of estate, 91A-3-103

Attorney for personal representative, compensation, 91A-3-720

Bond, when required, 91A-3-603

action against surety prohibited when barred against primary obligor, 91A-3-606 (2)

amount of bond, qualifications of sureties, 91A-3-604

demand for bond by interested person, 91A-3-605

power of court to excuse requirement for or reduce amount of bond, 91A-3-604

removal of personal representative for failure to meet requirement, 91A-3-605

terms and conditions of bond, 91A-3-606 (1)

Breach of fiduciary duty, time limitation on action or proceeding for, 91A-3-1006

Claims settled for less than nominal value, credit allowed, 91-3406

Compensation of personal representative, 91A-3-719

judicial review, 91A-3-722

Corepresentatives, when joint action required, 91A-3-717

surviving or only appointed personal representative, powers of, 91A-3-718

Creditors' claims, 91A-3-801 to 91A-3-816—See DECEDENTS' ESTATES, Creditors' claims

Definition, 91A-1-201 (31)

Duration of appointment, 91A-3-610 (1)

Estate litigation, reimbursement for expense and attorneys' fees, 91A-3-721

INDEX

References are to Title and Section numbers

PERSONAL REPRESENTATIVES (Continued)

- Estate tax, liability of personal representative for, 91-4411—See INHERITANCE TAX
- information to be furnished by personal representative, 91-4468
- Fees, proceedings for review and settlement of, 91A-3-722
- Final accounting, 91A-3-1012—See PROBATE AND ADMINISTRATION PROCEEDINGS, Closing of estate
- Foreign personal representatives, 91A-4-101 to 91A-4-303—See DECEDENTS' ESTATES, Nonresident decedents
- Fraudulent transfers of property, right of recovery, 91A-3-709
- Individual liability of personal representative, 91A-3-808
- Married person as personal representative, 36-127
- Notice of proceedings, methods of service, 91A-3-602
- Persons dealing with personal representative protected, 91A-3-712
- Possession of estate to be taken by personal representative, 91A-3-708
- Powers and duties of personal representative, 91A-3-701 to 91A-3-722
 - acts performed and duties discharged prior to appointment, validity, 91A-3-701
 - acts performed in good faith under general letters erroneously issued not invalid, 91A-3-702
 - care applicable to trustees required of personal representative, 91A-3-703
 - commencement of powers and duties, 91A-3-701
 - conflict of interest sales to personal representative voidable, exceptions, 91A-3-711
 - court order not required for settlement and distribution of estate, exception, 91A-3-704
 - duties generally, 91A-3-703
 - fraudulent transfers of property, right of recovery, 91A-3-709
 - heirs and devisees to be notified of appointment, contents of notice, effect of failure, 91A-3-705
 - improper exercise of power, liability, 91A-3-710
 - initiation of proceedings in court authorized, 91A-3-704
 - interested persons, administration to observe rights of, 91A-3-703 (2)
 - inventory of estate to be timely filed, contents, appointment of appraisers, distribution of copies, 91A-3-706
 - copy filed with department of revenue, 91A-3-706, 91A-3-707
 - sale of property prohibited prior to filing with department of revenue, 91A-3-715.1
 - supplementary inventory or appraisal, when required, 91A-3-707
- order of appointment, authority conferred, 91A-3-703 (2)
- payment of debt to stop running of interest, 91-2725
- possession of estate to be taken, exception, 91A-3-708
- preservation of estate by personal representative required, 91A-3-708
- priority of general letters first issued, 91A-3-702
- probated will as authority to administer and distribute estate, 91A-3-703 (2)
- ratification of acts performed by others, when authorized, 91A-3-701
- specific powers enumerated, restrictions, 91A-3-713
- standing to sue and be sued, 91A-3-703 (3)
- successor personal representative, powers and duties, 91A-3-716
- surcharge for authorized acts prohibited, 91A-3-703
- taxes on estate to be paid, 91A-3-708
- title to property, power to maintain action for determination of, 91A-3-708
- Preservation of estate required, 91A-3-708
- Priority among persons seeking appointment, 91A-3-203
- Qualification of personal representative, 91A-3-601
- Restraining order against personal representative on petition of interested person, notice, hearing, 91A-3-607
- Sale of estate property prohibited without delivery of inventory and statement of value to department of revenue, 91A-3-715.1
- Special administrator, when appointment authorized, 91A-3-614
 - foreign personal representative exercising special administrator powers, 91A-4-207 (2), 91A-4-208
 - persons who may be appointed, 91A-3-615
 - powers and duties, 91A-3-616, 91A-3-617
 - formal proceedings, 91A-3-617
 - informal proceedings, 91A-3-616
 - termination of appointment, 91A-3-618

INDEX

References are to Title and Section numbers

PERSONAL REPRESENTATIVES (Continued)

- Successor personal representative, substitution, powers and duties, 91A-3-613, 91A-3-716
- Supervised personal representative, duties, 91A-3-501—See PROBATE PROCEEDINGS AND ADMINISTRATION, Supervised administration
- Termination of appointment, 91A-3-608 to 91A-3-613
 - ancillary personal representative, removal, 91A-3-611
 - change of testacy status, 91A-3-612
 - closing of estate as terminating appointment, 91A-3-610 (2)
 - conservator appointed for personal representative as terminating appointment, 91A-3-609
 - death or disability terminating appointment, 91A-3-609
 - duration of appointment, 91A-3-610 (1)
 - duties of personal representative pending appointment of successor, 91A-3-608, 91A-3-609
 - effect of termination generally, 91A-3-608
 - removal for cause, petition, notice, grounds, procedure, 91A-3-611
 - subsequent proceedings, effect of, 91A-3-612
 - successor personal representative, substitution, powers and duties, 91A-3-613, 91A-3-716
 - voluntary resignation, when effective, procedure, 91A-3-610 (3)
- Terms "administrator" or "executor" include term "personal representative," 91A-6-103

PESTICIDES

- Access of department to private property, 27-243
- Administration of act by department of agriculture, 27-215
- Adulterated pesticides, distribution prohibited, 27-218
 - detention and embargo of adulterated pesticides, 27-220
- Advisory council, appointment, compensation and functions, 27-240
- Agricultural pesticides, designation and restrictions on use, 27-228
- Analysis of pesticides, 27-219
- Applicator's license required, 27-221
 - aerial applicator to meet requirements of aviation agency and department, 27-222
 - annual application for license, 27-220
 - examination of applicants for license, 27-224
 - financial responsibility, proof required, 27-232
 - governmental agencies, applicators working for, 27-231
 - information made available to applicators, 27-224
 - public utility applicators, 27-221
 - veterinarians exempt from licensing, registration and certain qualifications required, 27-221
- Complaints filed, service on, 27-235
- Confiscation of unauthorized products, 27-220
- Co-operation by department with other agencies, 27-242
- Damage reports filed with department, 27-233
- Dealer's license required, 27-225
 - examination of applicants for license, 27-226
 - pharmacists and veterinarians exempt from licensing, registration and certain qualifications required, 27-225
- Definition of terms, 27-216
- Disposal of pesticides, pollution to be avoided, 27-244
- Educational programs of department, 27-241
- Embargo of unauthorized pesticides, 27-220
- Farm applicators, restrictions on operations by, 27-228
- Financial responsibility, proof required of applicators, 27-232
- Formulas for pesticides, unauthorized disclosure prohibited, 27-218
- Governmental agencies, application of regulations to, 27-231
- Hearings by director on request of persons adversely affected, 27-236
- Home use, pesticides designated for, 27-227
- Inspection powers of department, 27-243
- Judicial review of departmental actions, 27-237
- Labeling required for pesticides, 27-218
 - detention and embargo of misbranded pesticides, 27-220

INDEX

References are to Title and Section numbers

PESTICIDES (Continued)

- Losses and damages, report filed with department, 27-233
- Nonresident licensees, agent for service of process on, 27-229
- Operators, procedures for controlling, 27-223
 - examination of operators, 27-224
 - governmental agencies, operators working for, 27-231
 - information made available to operators, 27-224
- Penalties for violations, 27-245
- Petitions filed with department, hearing on, 27-235
- Prohibited acts, 27-218
- Publication of information by department, 27-239
- Purpose of regulatory provisions, 27-214
- Registration required for pesticides distributed, 27-217
 - detention and embargo of unregistered pesticides, 27-220
 - unregistered pesticides, distribution prohibited, 27-218
- Retail sales for home use, limitations and license, 27-227
- Revocation or refusal of licenses and permits, 27-230
 - hearing before director on adverse action, 27-236
 - judicial review of adverse orders, 27-237
- Rules and regulations, contents and adoption, 27-234
 - hearings on proposed changes, 27-235
 - judicial review of rules, 27-237
- Sampling and analysis of pesticides, 27-219
- Short title of act, 27-213
- Subpoena power of department, 27-238
- Violation of provisions, penalties and prosecution, 27-245

PETROLEUM PRODUCTS

- Adulterated or misbranded products, sale prohibited, 60-205
- Calibration of tanks and measuring devices, 60-229
 - liquefied petroleum dispensing devices, 60-230
 - temperature correction required, 60-231
 - penalty for violations of act, 60-233
 - rules and standards of department, 60-232
- Dealer's license required to do business, 60-224
 - application for license, 60-224
 - definition of terms, 60-223
 - delinquent renewal fee, 60-228
 - expiration and renewal of licenses, 60-228
 - meter license fees, 60-227
 - penalty for unlicensed operation, 60-233
 - pump license fees, 60-226
 - rules and regulations for enforcement, 60-232
 - sealing of equipment where fee not paid, 60-228
 - seizure and confiscation of property of unlicensed dealer, 60-224
 - tank license fees, 60-228
- "Department" defined, 60-203.1
- Enforcement of chapter by department, 60-203.2
- Inspections and tests by department, 60-211
 - obstruction of entry or inspection prohibited, 60-217
 - samples furnished by dealers, 60-212
 - samples furnished by users, 60-217
- Rules, regulations and standards, adoption by department authorized, 60-203.2, 60-232
- Standards of quality, strength and purity, determination and promulgation by department, 60-203.3
- Substandard products, sale prohibited, 60-205

PHARMACIES AND PHARMACISTS

- Alcoholic beverages, possession and sale by druggist, 4-134
- Board of pharmacists
 - administrative services provided by department, 82A-1603
 - allocation to department for administrative purposes, 82A-1602

INDEX

References are to Title and Section numbers

PHARMACIES AND PHARMACISTS (Continued)

Board of pharmacists (Continued)

- annual election of officers, 66-1504(1)
- appointment, qualifications, removal and terms of members, 82A-1602.21
- compensation and expenses of members, 66-1505
- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.21
- fees and fines collected by department, deposit and use by board, 66-1527
- interns, regulation of practice, 66-1504
- legal assistance in hearings by board, 82A-1604
- powers and duties, 66-1504
- retention of functions by board, 82A-1605
- review of orders, application of rules of civil procedure, M. R. Civ. P., Rule 81 (a), Table A

Contraceptives, exemption from prohibitions of sale and distribution, 94-8-110.2

Criminal offenders, licensing of, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS

Dangerous drugs dispensed by practitioners, waiver of registration requirements for practitioners holding federal license, 54-316 (4)

Definition of terms, 66-1502

Examination for license, qualifications of applicant, 66-1506(4)

Inspectors, qualifications, 66-1521.1

Interns, permitted practices by, 66-1501

Labeling of prescriptions, 66-1523

Malpractice, statute of limitations, 93-2624

Medical practitioners' dealings with pharmacies

- definition of terms, 27-901
- enforcement proceedings by county attorneys, 27-905
- ownership of pharmacy prohibited, 27-904
- existing ownership exempt, 27-906
- rebates and commissions unlawful, 27-904

Store licenses and registration, 66-1508

PHOTOGRAPHY

License fund abolished, 79-416

PHYSICAL THERAPY

Application for examination, contents and filing, 66-2503

Certificate, issuance to licensed therapist, 66-2507

Criminal offenders, licensing, 66-4001 to 66-4005

Definition of terms used in practice act, 66-2501

Examination of applicants for license

- application for examination, 66-2503
- conduct of examination, 66-2506
- fee for examination, 66-2503
- repeat examination after failure to pass, 66-2503
- scope of examination, 66-2506

Exemption from practice act for other professions, 66-2513

Expiration and extension of licenses, 66-2508

Investigation and report of violations, 66-2515

Licensed therapist from other states, licensing, 66-2505

List of licensed therapists, publication and distribution, 66-2514

Malpractice, statute of limitations, 93-2624

Oath or fraudulent representation to obtain license, misdemeanor, 66-2512

Penalties for violations, 66-2516

Practice of medical profession by therapist not authorized, 66-2513

Qualifications of licensees to practice, 66-2502

Refusal to issue or renew license, grounds, 66-2509

Register of licensed persons kept by department, 66-2514

Rules to carry practice act into effect, adoption by board, 66-2514

Temporary licenses, issuance and duration, 66-2510

Unauthorized representation as licensed therapist, misdemeanor, 66-2511

INDEX

References are to Title and Section numbers

PHYSICIANS AND SURGEONS

- Acupuncture, practice regulated, 66-3401 to 66-3417—See ACUPUNCTURE
- Alcoholic beverages, prescription and administration by physician, 4-136
- Appeal from board, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
- Autopsies ordered by coroner, liability of physician limited, 95-813
- Child abuse reports, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
- Consent by minors to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS
- Contraceptives, exemption from prohibitions of sale and distribution, 94-8-110.2
- Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
- Criminal offenders, licensing of, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS
- Disability insurance, freedom of choosing physician, 40-4108, 40-4109
- Drug trade prohibited to practitioners, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners
- Emergency care at scene of accident, restriction on liability for, 17-410
- Gunshot or stab wounds, reporting to law enforcement officer required, time limitation, 66-1050
 - immunity from civil or criminal liability, 66-1051
- Malpractice, statute of limitations, 93-2624
- Medical Practice Act
 - annual registration of licensed physicians, fee, 66-1042
 - board of medical examiners
 - administrative services provided by department, 82A-1603
 - allocation to department for administrative purposes, 82A-1602
 - appointment, qualifications, removal and terms of members, 82A-1602.15
 - compensation and travel expense of board members, 66-1020
 - continuation in office of board members, 82A-1606
 - employment of personnel for board, 82A-1604
 - existence and composition of board, 82A-1062.15
 - legal assistance in hearings by board, 82A-1604
 - meetings of board, 66-1018
 - organization and officers of board, 66-1015
 - powers and duties of board, 66-1017, 82A-1605
 - records of board, 66-1019
 - retention of functions by board, 82A-1605
 - supervision and surveillance of licensees, 66-1016
 - certificates, 66-1021 to 66-1024
 - change of address or name of licensee, notice to department, 66-1048
 - disciplinary proceedings, 66-1038 to 66-1040
 - immunity from liability of disciplinary personnel, 66-1052
 - internship required, 66-1029
 - licensure
 - application, 66-1032
 - examination, 66-1033
 - fee, 66-1031
 - issuance of license, 66-1034
 - qualifications, 66-1025 to 66-1027
 - refusal of license, grounds, procedure, 66-1036
 - schools approved, 66-1028
 - money received by department, deposit and disposition, 66-1043
 - practice of medicine defined, exemption, 66-1012
 - practice prior to issuance of license prohibited, 66-1034
 - residency approved, 66-1030
 - unauthorized use of medical title or abbreviation prohibited, 66-1012(3)
 - unlawful practice a misdemeanor, 66-1041
 - unprofessional conduct, 66-1037
 - violations, 66-1041, 66-1045
 - felony violation, penalty, 66-1041(2)
 - injunctive relief available, procedure, 66-1045
 - misdemeanor violations, penalty, 66-1041(1)

INDEX

References are to Title and Section numbers

PHYSICIANS AND SURGEONS (Continued)

Occupational disease reports, contents and filing, 69-4204
Optometry regulatory act not applicable to, 66-1316
Venereal disease report required, 69-4604
 exposure of other persons to be reported, 69-4607

PINE HILLS SCHOOL

See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

PIPELINES

Attorney general to enforce provisions of act, 8-202
"Commission" defined, 8-201.1
Common carriers defined, 8-201
Connections and interchange facilities, power of commission to require, 8-205
Discrimination prohibited, 8-207, 8-210
Excavations in street, protection of lines against damage, 32-4801 to 32-4808—See
 STREETS, Underground facility
Financing statements of utility, contents and place of filing, 87A-9-302.2
 definition of terms, 87A-9-302.1
 Uniform Commercial Code, application, 87A-9-302.3
Investigatory powers of commission, 8-206
Irrigation and drainage pipelines, taxability, 84-206
Lien on pipeline, priority and filing of statement, 45-1003
Public utility, status of pipelines as, 8-202
Rate regulation
 discrimination prohibited, 8-207
 hearings and complaints, 8-204
 publication of tariffs, 8-206
Records of carriers, investigation by commission, 8-206
Reports required of carriers, 8-206

PLANNING AND ECONOMIC DEVELOPMENT

Contracts and agreements for projects and programs, 82-3706
Co-operation with other agencies, 82-3706
Department of community affairs, functions, 82-3705 to 82-3705.3
 community development, 82-3705.1
 economic development, 82-3705.3
 functions of department, 82-3705
 recreational facilities development, 82-3705.2
 state planning, 82-3705
Economic Land Development Act, 84-7501 to 84-7526—See ECONOMIC LAND
 DEVELOPMENT ACT
Funds in county land planning account, apportionment and distribution to counties,
 accounting for use of funds, 82-3710
Necessity and public policy, declaration of, 82-3702
Short title, 82-3701

PLANNING AND ZONING

Act not to prevent recovery and use of mineral, forest or agricultural resources, 11-3853
Airport authority zoning power, 1-909
 municipal zoning power preserved, 1-924
Appropriations for expenses of planning board, 11-3815, 11-3825
Building regulations, extraterritorial application, 11-2702
City-county board
 advisory function, 11-3801
 apportionment of expenses between governmental units, 11-3825
 budget of board, 11-3824
 composition of board, 11-3810
 jurisdictional area, definition and establishment, 11-3830
 projects outside area, power to plan, 11-3830.1
 zoning districts within jurisdictional area, 16-4703

INDEX

References are to Title and Section numbers

PLANNING AND ZONING (Continued)

City-county board (Continued)

- powers of board, 11-3824
- property, power to accept, hold and use, 11-3827
- purpose of creation, 11-3801
- qualifications of citizen members, 11-3812
- quorum of board, 11-3818
- recommendations to county commissioners, 16-4702
- removal of citizen member from office, 11-3813
- reports of board, 11-3824
- terms of office of members, 11-3810
- travel expenses to attend regional or national conferences, 11-3820
- zoning commission, board functioning as, 11-3828
- county zoning commission, acting as, 16-4702

City planning board

- advisory function, 11-3801
- composition, 11-3804
- property, power to accept, hold and use, 11-3827
- purpose of creation, 11-3801
- qualifications of citizen members, 11-3808

Community development, technical assistance and co-operation by department of inter-governmental relations, 82-3705.1—See PLANNING AND ECONOMIC DEVELOPMENT

County planning board authorized, 11-3801

- composition of board, 11-3810
- districts created by county commissioners, 11-3825
- jurisdictional area of county planning board, 11-3830.2
- notice and hearing on creation of county board, 11-3801
- recommendations to county commissioners as to districts, 16-4702
- residence of board members, 11-3812
- vacancies on board, filling, 11-3811

County zoning districts

- actions to enforce zoning regulations, 16-4707
- adoption of resolution creating district and establishing regulations, 16-4705
- board of adjustment, establishment, powers, and procedure, 16-4706
- city-zoned area not to be included, 16-4101
- comprehensive development plan to be used, 16-4704
- continuation of nonconforming uses, 16-4709
- enforcing officers, appointment and powers, 16-4708
- establishment of districts authorized, 16-4703
- factors considered in making regulation, 16-4704
- hearings on proposed district and regulations, 16-4705
- interim zoning map or regulation, 16-4711
- judicial review of actions by board of adjustment, 16-4706
- natural resources to be protected, 16-4710
- permits for location or conformance, issuance and fees, 16-4708
- power of commissioners to adopt regulation, 16-4701
- procedure for adoption of regulations and boundaries, 16-4705
- property, power of board to accept, hold and use, 11-3827
- publication of intention to create district, 16-4705
- purpose of act, 16-4701
- recommendations by planning boards, 16-4702
- resolution of intention to create district, 16-4705
- uniformity of regulation within district, 16-4703
- uses regulated within district, 16-4703
- violations of act or resolution, penalty, 16-4707

Definition of terms in planning board law, 11-3803

Foster, boarding home or community residential facility as residential use of property, 11-2702.2

- “community residential facility” defined, 11-2702.1
- conditional use permit may be required, 11-2702.2
- exempt from safety or sanitary regulation not applicable to resident, 11-2702.2
- licensing of home or facility required, 11-2702.2

INDEX

References are to Title and Section numbers

PLANNING AND ZONING (Continued)

Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT

Interim ordinance of city or town prohibiting uses conflicting with proposed zoning, duration, extension, 11-2711

Joint or consolidated planning boards authorized, 11-3815.1
effect on existing boards, 11-3815.1 (4), (5)
interlocal agreement as method, contents, 11-3815.1 (2), (3)

Master plan

adoption of plan by governing bodies, 11-3840
adoption of plan by planning board, 11-3834
contents of plan, 11-3831
definition, 11-3803
governing bodies' action on plan, 11-3840
hearing prior to adoption of plan, 11-3833
policies to be embodied in plan, 11-3828

Open-space land, 62-601 to 62-609—See PARKS

Ordinances and resolutions

recommendations of planning board to governing bodies, 11-3834
subdivision plats, requiring conformity to master plan, 11-3842
validation of prior actions, 11-3855

Planning districts, creation by county commissioners authorized, 11-3825

Subdividing and platting of land

abstract or title insurance required, certification by city or county attorney, 11-3865
advice of planning board required on approval by governing body, 11-3842.1
certificate of survey, when required, contents, form, 11-3872
citation of act, 11-3859
conformity to master plan, ordinance or resolution requiring, 11-3842
correction of survey and plat at expense of governing body, 11-3874
covenants to run with land, 11-3869
criteria for approval or disapproval of plat, 11-3866 (4)
dedication of portion of subdivision for parks and playgrounds may be required, 11-3864 (1)
cash donation in lieu of dedication, 11-3864 (2)
dedicated lands deemed county lands, 16-4808
location of parks and playgrounds in certain subdivisions by governing body, 11-3864 (1)
sale, lease or exchange of dedicated land prohibited, exceptions, 16-4808
waiver of dedication and cash donation, 11-3864(3) to (7)

definition of terms, 11-3861

donations or grants to public as grants to donee, 11-3871

environmental assessment to accompany preliminary plat, contents, 11-3863 (3) (4)

exemption of certain land dispositions, 11-3862(4)(8)

fees to be paid by subdivider, 11-3868

filing of plat required, 11-3862 (2), 11-3867

final plat to be reviewed by land surveyor and governing body, 11-3867

dispositions to be made in accordance with plat, 11-3867 (3)

recording of plat, 11-3867 (3), 11-3870

finding of public interest required, 11-3860

highway land acquisitions exempt, 11-3862(4)

index of plats to be kept by county clerk and recorder, contents, 11-3873

minimum requirements for subdivision regulations prescribed by department, 11-3863(2)

environmental assessments to be required of subdivider, 11-3863 (3)

scope and contents, 11-3863 (2)

oaths, administration by registered land surveyor authorized, record to be kept, 11-3875

preliminary plat to be submitted to local governing body, 11-3866 (1)

action on plat by governing body, time allowed, 11-3866 (2)

approval of plat by governing body, duration, 11-3866 (5)

public hearing required, notice, 11-3866 (3)

rejection or conditional approval, procedure, 11-3866 (3)

INDEX

References are to Title and Section numbers

PLANNING AND ZONING (Continued)

Subdividing and platting of land (Continued)

- prior recorded plats, certificates of survey, and other title records validated, 11-3870(2)
- purpose of law, 11-3860
- recording of plat, effect, 11-3867, 11-3870
- regulations to be adopted and enforced by counties and municipalities, scope, 11-3863 (1)
 - contents of regulations, 11-3863 (5) to (7)
 - failure of governing body to adopt regulations, action by department through division of planning, 11-3863(8)
 - public hearing on regulations required, notice, 11-3863 (1)
- replacement of monuments removed in course of construction as responsibility of governing body, 11-3862 (11)
- sanitary restrictions as to water supply and sewage disposal, 69-5001 to 69-5005
- survey by registered land surveyor required, exceptions, 11-3862
 - contents of survey, 11-3862 (2)
- uniform monumentation standards prescribed by department, 11-3862(10)
- vacation of plat, reversion of title, utility rights to continue as easements, 11-3870 (1)
- violation as misdemeanor, punishment, 11-3876
- Submission of urban renewal plan to commission, 11-3906
- Tax levy for planning board purposes, 11-3815, 11-3825
- Validation of prior ordinances, rules and regulations, 11-3855

PLEADINGS

- Accord and satisfaction as affirmative defense, M. R. Civ. P., Rule 8(c)
- Adoption by reference, M. R. Civ. P., Rule 10(c)
- Affirmative defenses, setting forth in pleadings, M. R. Civ. P., Rule 8(c)
- Alternative pleadings permitted, M. R. Civ. P., Rule 8(e)
- Ambiguity, motion for more definite statement, M. R. Civ. P., Rule 12(e)
- Amendments of pleadings, M. R. Civ. P., Rule 15
- Appearance, filing of answer constituting, 93-8505
- Arbitration and award as affirmative defense, M. R. Civ. P., Rule 8(c)
- Assumption of risk as affirmative defense, M. R. Civ. P., Rule 8(c)
- Capacity to sue or be sued, absence raised by negative pleadings, M. R. Civ. P., Rule 9(a)
- Caption, content, M. R. Civ. P., Rule 10(a)
- Claims for relief, contents, M. R. Civ. P., Rule 8(a)
- Conciseness required, M. R. Civ. P., Rule 8(e)
- Conditions precedent, general averment of performance permitted, M. R. Civ. P., Rule 9(c)
- Consideration, failure as affirmative defense, M. R. Civ. P., Rule 8(c)
- Contributory negligence as affirmative defense, M. R. Civ. P., Rule 8(c)
- Counterclaims, M. R. Civ. P., Rule 13(a) to (f)
- Criminal cases—See CRIMINAL PROCEDURE
 - arraignment of defendant, 95-1601 to 95-1608
 - charging an offense, 95-1501 to 95-1506
 - guilty plea, when accepted, 95-1902
 - justices' courts and police courts, 95-2004
 - pretrial motions, 95-1701 to 95-1710
- Cross-claims, M. R. Civ. P., Rule 13(g)
- Damages, specific statement of special damage required, M. R. Civ. P., Rule 9(g)
- Defenses, form of stating, M. R. Civ. P., Rule 8(c)
- Defenses required to be made by responsive pleadings, M. R. Civ. P., Rule 12(b)
- Demurrers abolished in civil proceedings, M. R. Civ. P., Rule 7(c)
- Denials, form of stating, M. R. Civ. P., Rule 8(b)
- Directness required, M. R. Civ. P., Rule 8(e)
- Discharge in bankruptcy as affirmative defense, M. R. Civ. P., Rule 8(c)
- Duress as affirmative defense, M. R. Civ. P., Rule 8(c)
- Enumeration of pleadings allowed in civil cases, M. R. Civ. P., Rule 7(a)
- Estoppel as affirmative defense, M. R. Civ. P., Rule 8(c)
- Exceptions for insufficiency abolished in civil proceedings, M. R. Civ. P., Rule 7(c)

INDEX

References are to Title and Section numbers

PLEADINGS (Continued)

Exhibits as parts of pleading, M. R. Civ. P., Rule 10(c)
Failure to deny, effect, M. R. Civ. P., Rule 8(d)
Fellow servant rule as affirmative defense, M. R. Civ. P., Rule 8(c)
Filing with court required, M. R. Civ. P., Rule 5(d)
Form of pleading, M. R. Civ. P., Rule 10
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 2 to 14, 16, 17
Fraud as affirmative defense, M. R. Civ. P., Rule 8(c)
 circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)
General denial permitted, M. R. Civ. P., Rule 8(b)
Illegality as affirmative defense, M. R. Civ. P., Rule 8(c)
Inconsistent pleadings permitted, M. R. Civ. P., Rule 8(e)
Intent, general averment permitted, M. R. Civ. P., Rule 9(b)
Judgment on pleadings, motion for, M. R. Civ. P., Rule 12(c)
Judgments, manner of pleading, M. R. Civ. P., Rule 9(e)
Justices' courts, 93-6802.1, 93-6802.2
Knowledge, general averment permitted, M. R. Civ. P., Rule 9(b)
Laches as affirmative defense, M. R. Civ. P., Rule 8(c)
License as affirmative defense, M. R. Civ. P., Rule 8(c)
Malice, general averment permitted, M. R. Civ. P., Rule 9(b)
Mistake as defense, circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)
Names of parties, when included, M. R. Civ. P., Rule 10(a)
Official documents or acts, averment as to compliance with law, M. R. Civ. P., Rule 9(d)
Ordinances, manner of pleading, M. R. Civ. P., Rule 9(d)
Paragraphing and numbering, M. R. Civ. P., Rule 10(b)
Payment as affirmative defense, M. R. Civ. P., Rule 8(c)
Place, materiality of averments as to, M. R. Civ. P., Rule 9(f)
Pre-trial conference, consideration in, M. R. Civ. P., Rule 16
Regulations, manner of pleading, M. R. Civ. P., Rule 9(d)
Release as affirmative defense, M. R. Civ. P., Rule 8(c)
Res judicata as affirmative defense, M. R. Civ. P., Rule 8(c)
Separation of claims and defenses, M. R. Civ. P., Rule 10(b)
Service on parties, when required, M. R. Civ. P., Rule 5(a)
Signature by attorney, M. R. Civ. P., Rule 11
Special damage, specific statement of items required, M. R. Civ. P., Rule 9(g)
Statute of frauds as affirmative defense, M. R. Civ. P., Rule 8(c)
Statute of limitations as affirmative defense, M. R. Civ. P., Rule 8(c)
Statutes, manner of pleading, M. R. Civ. P., Rule 9(d)
Striking pleadings or matter therein, motion for, M. R. Civ. P., Rule 12(f)
Substantial justice, pleadings construed to effect, M. R. Civ. P., Rule 8(f)
Supplemental pleadings, M. R. Civ. P., Rule 15(d)
Third-party practice, M. R. Civ. P., Rule 14
Time allowed for responsive pleadings, M. R. Civ. P., Rule 12(a)
Time, materiality of averments as to, M. R. Civ. P., Rule 9(f)
Variance of proof, amendment of pleadings, M. R. Civ. P., Rule 15(b)
Verification of pleading, form and persons by whom made, 93-3702
Waiver as affirmative defense, M. R. Civ. P., Rule 8(c)
Waiver of defenses by failure to plead, M. R. Civ. P., Rule 12(h)

PLEDGES

See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507

Decedents' estates, enforcement of pledge, 91A-3-809, 91A-3-814—See DECEDENTS' ESTATES, Creditors' claims

Definition of term, 19-103

PLUMBERS

Act not to require employment of licensed plumbers, 66-2415

Apprentices, registration with department required, record required, 66-2406

Board of plumbers

 allocation to department for administrative purposes, 82A-1602

 annual selection of chairman, 66-2414

INDEX

References are to Title and Section numbers

PLUMBERS (Continued)

Board of plumbers (Continued)

- appointment, qualifications and terms of members, 82A-1602.22
- compensation of members, 66-2403
- continuation in office or replacement of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.22
- legal assistance in hearings by board, 82A-1604
- quorum at meetings, 66-2409
- record of proceedings kept by department, 66-2414
- retention of functions by board, 82A-1605
- rules, adoption authorized, 66-2409, 66-2414
- travel expense, reimbursement, 66-2403

Declaration of public interest, 66-2412

Definition of terms, 66-2401.1

Fee on fixtures installed by plumbers, 66-2427

Licensing

- application for license, contents, 66-2404
- bond required of master plumber, 66-2405
- corporation or firm, requirements for licensing, 66-2404
- criminal offenders, licensing of, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS
- examination of applicants for license, 66-2402, 66-2403
 - fees for examination, 66-2405
- experience required of licensees, 66-2402
- expiration of license, renewal, fee, 66-2405
- fees received for licenses, deposit and use, 66-2407
- required when working in city or town unless excused by governing body, 66-2401

Minimum standards

- exceptions from act, 66-2426
- inferior installations, restraining, 66-2417
- municipal ordinances, power to adopt rules and regulations, 66-2424
- prescribing, 66-2416
- revocation or suspension of license for work below minimum, 66-2419
 - hearing, 66-2422
 - initiation, 66-2420
 - procedure, 66-2420
- state plumbing code, adoption, 66-2416

Permit required for installation, removal, alteration or repair of plumbing and drainage systems, 66-2427 (1)

- commencement of work without permit, double fee, exception, 66-2427 (4)
- exempt work in installations, 66-2426, 66-2427 (2)
- fees for permits, 66-2427
- inspection of permit work by board, 66-2427 (5), (6), (7)
- procedure for obtaining permit, 66-2427 (3)
- revocation or suspension of permit, grounds, 66-2427 (8)

PODIATRISTS

See CHIROPODISTS, 66-601 to 66-611

POISONS

Pesticides, 27-213 to 27-245—See PESTICIDES

POLICE

See PEACE OFFICERS

POLICE COURTS

See CITY COURTS

POLYGRAPH

Tests required as condition to employment prohibited, violation as misdemeanor, 41-119
not applicable to law enforcement agencies, 41-120

INDEX

References are to Title and Section numbers

POPULAR SOVEREIGNTY

Political power vested in and derived from the people, 1972 Const., II, 1

POST-ENEMY-ATTACK PROVISIONS

Continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—

See WAR, Continuity in government

Resource management, 77-2401 to 77-2406—See WAR, Resource management

POST-SECONDARY EDUCATIONAL INSTITUTIONS

Proprietary post-secondary educational institutions, license required, 75-9209

academic records of students to be kept by institution, filing with or seizure by department upon discontinuance of operation, 75-9218

advisory council created, composition, appointment, qualifications and terms of members, 75-9205

advisory duties of council, 75-9205(2)

compensation of members, 82A-110

organization, meetings, quorum, 82A-110

agents of institutions, permit required, 75-9210

application for permit, contents and formal requirements, fee, 75-9210(1)

bond required for permit, amount, condition, 75-9216

suspension of permit upon release of surety, notice, replacement, 75-9216

(3)

denial of permit, procedure, 75-9211

fee for issuance and renewal of permit, 75-9217

issuance of permit, form, contents, term, 75-9210(3) to (5)

revocation of permit, procedure, 75-9212

application for license, contents and formal requirements, 75-9209

bond may be required of applicant, condition, term, 75-9216

suspension of license upon release of surety, notice, replacement of bond, 75-9216(4)

denial of application, procedure, 75-9211

fee for application, 75-9217

revocation of license, notice, procedure, 75-9212

civil relief for persons suffering loss or damage by reason of unlawful acts, 75-9215

definition of terms, 75-9202

department of business regulation to administer law, 75-9204

information to be made available by other state agencies, 75-9204

minimum standards for institutions, 75-9207

powers and duties of department, 75-9206

exempt institutions and transactions, 75-9203

issuance of license, form and contents, 75-9209

legislative purpose, 75-9201

lending agencies extending credit for tuition, fees or charges, duties, liabilities, defenses, 75-9219(3) to (5)

minimum standards required of institutions, programs and courses, 75-9207

notes and contracts for services, 75-9219

prohibited acts, 75-9208

renewal of license, fee, 75-9217

severability of provisions, 75-9223

violations, 75-9220 to 75-9222

civil relief of person suffering loss or damage, 75-9215

criminal penalty, 75-9220

injunction available for enforcement of law, 75-9222

process served within or without state, 75-9221

submission of institution or agent to jurisdiction of courts, 75-9221

Public post-secondary vocational-technical centers, 75-7701 to 75-7715—See SCHOOLS,

Post-secondary vocational-technical centers

POTATOES

Grading of potatoes, 3-1404

POULTRY

Sanitary conditions and poultry diseases, duties of department of livestock, 46-209

INDEX

References are to Title and Section numbers

POVERTY RELIEF

See PUBLIC WELFARE, Economic opportunity and poverty relief, 71-1601 to 71-1604

POWER OF AMENDMENT

See POWER OF APPOINTMENT

POWER OF APPOINTMENT

Appointees of decedent liable for contribution to augmented estate, 91A-2-207
General residuary clause or disposition not exercise of power without specific reference, 91A-2-610

Holder deemed to act for beneficiaries, 91A-1-108

Married persons executing power, 67-903, 67-904
 concurrence of spouse not required, exception, 67-903
 married woman before attaining majority, 67-904

Notice to holder as binding on interested persons, 91A-1-403

Orders of court binding holder, effect, 91A-1-403 (2) (a)

Property appointed to surviving spouse by decedent as property derived from decedent, 91A-2-202

Protected person as donee of power, 91A-5-408 (4)

 "protected person" defined, 91A-5-101

Renunciation by appointee, 91A-2-801

POWER OF ATTORNEY

Delegation of powers by parent or guardian, time limitation, 91A-5-104

Disability of principal contemplated in writing, power not affected by disability, 91A-5-501

 other powers of attorney not revoked until notice of death or disability, 91A-5-502

POWER OF REVOCATION

See POWER OF APPOINTMENT

PREDATORY ANIMALS

Levies on livestock and commodities authorized for predator control, 1972 Const., XII, 1

PRELIMINARY EXAMINATION

See CRIMINAL PROCEDURE, Preliminary examination, 95-1201 to 95-1204

PRESUMPTION

Death presumption from continuous absence unheard from, 91A-1-107

Legality of rules, orders, findings, etc., of industrial accident board under occupational disease act, 92-1360

PRETRIAL CONFERENCE

Conduct and scope of conference, M. R. Civ. P., Rule 16

PRETRIAL MOTIONS

Criminal procedure, 95-1701 to 95-1710—See CRIMINAL PROCEDURE, Pretrial motions

PRINCIPAL AND INCOME ACT

Act to govern ascertainment of principal and income and apportionment of receipts and expenses, 67-1902

Animals, offspring of, 67-1908

Application to estates created after effective date, 67-1916

Bonds or obligations, 67-1906

Business, operation of, 67-1907

Coverage of act, 67-1902

Death of tenant between payment dates, apportionment, 67-1904

Definitions, 67-1901

Delayed income, 67-1911

Depletion of property, 67-1910

INDEX

References are to Title and Section numbers

PRINCIPAL AND INCOME ACT (Continued)

Expenses

- apportionment, 67-1912
- expenses where no trust created, 67-1913
- improvement, 67-1913

Income

- corporate dividends, when, 67-1905
- definition, 67-1901
- receipts constitute, 67-1903

Interpretation of act, uniformity, 67-1914

Natural resources, 67-1909

Net profits derived from operation of business, 67-1907

Offspring of animals, 67-1908

Principal

- change in form of investment of unprofitable principals, 67-1911
- corporate dividends, when, 67-1905
- definition, 67-1901
- loss or gain on sale of bonds or obligations, 67-1906
- property subject to depletion, 67-1910
- receipts constitute, 67-1903

"Remainderman" defined, 67-1901

Severance of natural resources, 67-1909

Short title of act, 67-1915

Stock dividends, 67-1905

"Tenant" defined, 67-1901

"Trustee" defined, 67-1901

Uniform principal and income act, 67-1915

PRINTING

County printing, 16-1225 to 16-1233—See COUNTIES, Printing

Definition, 19-103.1

State printing

- certification of printer as to prices and rates, 82-1152
- claim for printing, approval by state controller, 82-1910
- penalty for violations of act, 82-1138
- preference to Montana printers, 82-1137
- union label required, exceptions, 82-1137
- wages and working conditions required of contractors, 82-1137

PRISONS AND PRISONERS

See also JAILS

Conditionally released prisoner considered on parole until expiration of term, 95-3215

"Correctional institution" defined, 94-2-101(10)

Escape as criminal offense, punishment, 94-7-306

aiding offender to escape as obstructing justice, punishment, 94-7-303

Escape from prison, venue of prosecution, 95-409

Escape, use of force by peace officer to prevent, 94-3-106

Illegal articles transferred to or by persons subject to official detention, punishment,
94-7-307(1)

"an illegal article" defined, 94-2-101(23)

Interstate agreement on detainers, text and enactment, 94-1101-1, redes. 95-3131

co-operation of public agencies in enforcement, 94-1101-3, redes. 95-3133

co-ordinator of agreement, appointment and duties, 94-1101-6, redes. 95-3136

delivery of prisoner by institution on detainer, 94-1101-5, redes. 95-3135

district courts to function under agreement, 94-1101-2, redes. 95-3132

escape from custody on detainer, penalty, 94-1101-4, redes. 95-3134

Mistreatment of prisoners as criminal offense, punishment, 94-8-113

"Official detention" defined, 94-7-306(1)

Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing

Prisoner furlough program

administrative rules, 95-2223

agent or involuntary servant, prisoner not considered as, 95-2224

INDEX

References are to Title and Section numbers

PRISONS AND PRISONERS (Continued)

Prisoner furlough program (Continued)

- application by prisoner, 95-2220

- consideration, 95-2221

- cancellation and revocation of furlough, preliminary and final hearings, 95-2226.1
 - cancellation without preliminary hearing, when, 95-2226.1 (3)

- co-operation by state agencies, 95-2223

- definitions, 95-2218

- denial of application, reapplication, hearing, 95-2221 (7)

- department to establish program and rules, 95-2219

- "department" defined, 95-2218 (1)

- delegation of supervision duties to supervising agency, 95-2226.1

- final authority of department, 95-2221

- earnings of prisoner, 95-2222

- escape, penalty, 95-2226.1 (6)

- furlough plan, 95-2221

- parole eligibility unaffected, 95-2225

- plan unsatisfactory to prisoner, execution of new plan, 95-2226.1 (4)

- privileges under, 95-2219

- purpose and intent, 95-2217

- release of prisoner under plan, 95-2221 (4)

- sheriff's consent, when required, 95-2221 (6)

- unemployment, disability, or inability of prisoner to benefit from furlough, procedure, 95-2226.1 (5)

Review of legal sentences, review division of supreme court, 95-2501 to 95-2504

Sentence and judgment, 95-2201 to 95-2216; 95-2301 to 95-2312—See CRIMINAL PROCEDURE, Sentence and judgment

State prison

- contracts for confinement of inmates in other institutions, 80-1907

- criminal identification bureau, 80-2001 to 80-2006—See BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

- death of prisoner, payment of inquest costs, 16-3410

- department of institutions, state prison in, 80-1403—See STATE INSTITUTIONS, Department of institutions

- discharge of prisoner, clothing and money furnished, 80-1906

- good time allowance for inmates, 80-1905

- hours of work for employees of prison, 80-1903

- industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted

- deduction from wages earned disbursed upon discharge or parole, 80-1906

- intensive rehabilitation center, 80-1909 to 80-1911

- location of prison, 80-1901

- motor vehicle functions transferred, 82A-1205

- punishment of inmates, restrictions on, 80-1904

- purpose of prison, 80-1901

- state hospital, commitment and temporary transfer of inmate to, 80-1908

- transfer of prisoners under 21 to department of institutions, 80-2210

- warden, qualifications, 80-1902

Unauthorized communication with persons subject to official detention, punishment, 94-7-307(2)

Venereal disease, examination and treatment of prisoners for, 69-4606

Weapons, prisoner's possession prohibited, punishment, 94-8-213

Western Interstate Corrections Compact, 95-2308 to 95-2312

Work release program, 95-2216

PRIVACY RIGHTS

Constitutional right of individual privacy, 1972 Const., II, 10

Criminal violations, punishment, 94-8-114

PRIVATE FOUNDATIONS

See FOUNDATIONS

INDEX

References are to Title and Section numbers

PRIVATE INVESTIGATORS AND PATROL OPERATORS

- Advertising of licensee to contain name and address, 66-3321
- Bond required of licensees, amount, condition, 66-3322
 - actions maintainable by persons injured, 66-3323
 - cash deposit in lieu of bond, 66-3325
 - form of bond, 66-3323
 - maintenance of bond in full force and effect required, failure as ground for suspension of license, 66-3324
 - termination of future liability on bond, notice required, 66-3326
- Change of name, address or personnel, notice to department required, 66-3317
 - licensee responsible for good conduct of business and personnel, 66-3318
- Confidentiality of information obtained by licensees or personnel, 66-3319
- Criminal offenders, licensing, 66-4001 to 66-4005
- Definition of terms, 66-3301
- Director, powers and duties, 66-3302, 66-3303
 - "director" defined, 66-3301(1)
- Employee records to be maintained by licensees, 66-3320
- Fees payable by applicants and licensees, 66-3330
 - deposit in earmarked revenue fund for use of department, 66-3330 (2)
- License required for private investigators and patrol operators, 66-3304
 - application for license, form and contents, 66-3307, 66-3308
 - bond required of licensee, 66-3323 to 66-3326—See Bond required, above
 - denial of application for license or renewal, hearing, procedure, 66-3311
 - examination of applicant or manager, 66-3310
 - exemptions, 66-3306
 - expiration and renewal of license, 66-3329
 - annual fee, 66-3330
 - false representation of employment by licensee prohibited, 66-3304
 - form and contents, 66-3314
 - pocket identification cards issued by director, surrender of card upon termination of position, 66-3316
 - posting of license in place of business required of licensee, 66-3315
 - qualifications of applicant, criteria for granting of license, 66-3309
 - scope of business and operations of private investigators and patrol operators, 66-3304
 - suspension or revocation of license, grounds, 66-3327
 - temporary operation without license where qualified person ceases connection with business, 66-3313
- Manager operating business of licensee, qualifications, examination, 66-3312
- Severability of provisions, 66-3331
- Violation as misdemeanor, penalty, 66-3328

PRIVIES

Cleaning of privies, 69-5401 to 69-5408—See SANITARY LICENSEES

PRIVILEGED COMMUNICATIONS

- News media, information source, 93-701-4
- Psychologist and client, 66-3212
- Speech pathologist or audiologist and client, 93-701-4
- Venereal disease infection, information concerning, 69-4610

PROBATE AND ADMINISTRATION PROCEEDINGS

- Ancillary and other local administrations governed by code provisions, 91A-4-209—
 - See DECEDENTS' ESTATES, Nonresident decedents
- Claims against decedent, administration required for enforcement of, 91A-3-104—See DECEDENTS' ESTATES, Creditors' claims
- Closing of estate, 91A-3-1001 to 91A-3-1010
 - certificate or receipt showing payment of inheritance tax required, 91A-3-1004
 - clerk's certificate of full administration as discharging liens securing fiduciary performance, 91A-3-1008
 - distributees' relative liability for undischarged claim, right of contribution, 91A-3-1005
 - time limitations, 91A-3-1007

INDEX

References are to Title and Section numbers

PROBATE AND ADMINISTRATION PROCEEDINGS (Continued)

Closing of estate (Continued)

- final accounting by personal representative required for closing of estate, exception, 91A-3-1012
- accounting pending administration requested by interested person, 91A-3-1012
- formal proceedings, 91A-3-1001, 91A-3-1002
 - complete settlement of estate, procedure for, 91A-3-1001
 - informally probated will, procedure for settlement of estate, 91A-3-1002
- heirs or devisees omitted as parties in previous testacy proceeding, procedure, 91A-3-1001
- lien of state for taxes follows property sold or distributed, 91A-3-1010
- small estates, 91A-3-1201 to 91A-3-1204—See DECEDENTS' ESTATES, Small estates
- subsequent administration of newly discovered estate property, 91A-3-1009
- sworn statement of personal representative, closing estate by, procedure, 91A-3-1003
- time limitations on proceedings after distribution, 91A-3-1006, 91A-3-1007, 91A-3-1011
 - breach of fiduciary duty by personal representative, 91A-3-1006
 - closing of estate, 91A-3-1011
 - recovery against distributees, 91A-3-1007
- Commencement of administration by issuance of letters, 91A-3-103
 - "letters" defined, 91A-1-201 (24)
- Compromise of controversies authorized, binding effect, 91A-3-1101
- procedure for securing court approval of compromise, 91A-3-1102
- Devolution of estate at death, restrictions and limitations, 91A-3-101
- Discovery procedures applicable, M. R. Civ. P., Rule 1
- Distribution of estate, 91A-3-901 to 91A-3-916—See DECEDENTS' ESTATES, Distribution of estate
- Exclusive jurisdiction of district court, 91A-3-105
- Formal appointment proceedings, procedure, 91A-3-414
- Formal testacy proceedings, 91A-3-401 to 91A-3-413
 - commencement of proceedings by interested person filing petition, 91A-3-401
 - "interested person" defined, 91A-1-201 (21)
 - contested cases, 91A-3-406 to 91A-3-413
 - burden of proof, 91A-3-407
 - execution of will, required proof, 91A-3-406
 - finality of order of court, 91A-3-412
 - jury trial, when available, 91A-1-306
 - modification or vacation of order, 91A-3-412, 91A-3-413
 - more than one instrument probated, 91A-3-410
 - order of court, findings required, 91A-3-409
 - partial intestacy, order of court, 91A-3-411
 - probate of will from jurisdiction not providing for probate, 91A-3-409
 - validity or construction of will established by court of another state, acceptance, 91A-3-408
 - costs and expenses, by whom paid, 91-1106
 - "formal proceedings" defined, 91A-1-201 (16)
 - informal proceedings suspended pending formal proceeding, 91A-3-401
 - jury trial, when available, 91A-1-306
 - nature and purpose of proceedings, 91A-3-401
 - notice of hearing on petition, 91A-3-403
 - objections to probate of will to be stated in pleadings, 91A-3-404
 - petition for formal proceedings, contents, 91A-3-402
 - intestacy adjudication, petition for, 91A-3-402
 - relief requested in petition, 91A-3-401
 - uncontested cases, procedure, 91A-3-405
- Informal appointment proceedings, 91A-3-307 to 91A-3-311
 - appointment of personal representative by clerk, procedure, requirements, 91A-3-307
 - "informal proceedings" defined, 91A-1-201 (20)
 - interested persons authorized to make application, 91A-3-105
 - notice requirements, 91A-3-310

INDEX

References are to Title and Section numbers

PROBATE AND ADMINISTRATION PROCEEDINGS (Continued)

Informal appointment proceedings (Continued)

- priority among persons seeking appointment, 91A-3-203
- proof and findings required for informal appointment, 91A-3-308
- qualifications of personal representative, 91A-3-203 (6)
- status, powers and duties of personal representative established by appointment, 91A-3-307 (2)
- stay of proceedings pending formal testacy proceedings, 91A-3-401
- time limitations, 91A-3-108
- unavailability of informal appointment in certain cases, 91A-3-309, 91A-3-311
- refusal of informal appointment not an adjudication, 91A-3-309
- venue, 91A-3-201, 91A-3-202

Informal probate proceedings, 91A-3-301 to 91A-3-306

- application for informal probate directed to clerk, contents and formal requirements, 91A-3-301
- conclusive effect of informal probate, 91A-3-302
- "informal proceedings" defined, 91A-1-201 (20)
- necessity for proceedings, 91A-3-102 to 91A-3-104
- notice requirements for informal probate, 91A-3-306
- persons interested in estate, proceedings by, 91A-3-105
- proof and findings required of clerk for informal probate, 91A-3-303
- refusal of informal probate not an adjudication, 91A-3-305
- statement of informal probate by clerk, time for issuance, 91A-3-302
- stay of proceedings pending formal testacy proceedings, 91A-3-401
- time limitation, 91A-3-108
- unavailability of informal probate in certain cases, 91A-3-304, 91A-3-305
- venue, 91A-3-201, 91A-3-202

Intestacy adjudication and appointment of administrator, petition for, procedure, 91A-3-402 (2)

Inventory of estate to be timely filed, contents, appointment of appraisers, distribution of copies, 91A-3-706

- filing of copies with department of revenue, 91A-3-706, 91A-3-707
- sale of estate property prohibited without filing of inventory and statement of value, exception, 91A-3-715.1
- supplementary inventory or appraisalment, when required, distribution of copies, 91A-3-707

Issuance of letters as commencement of administration, 91A-3-103

- "letters" defined, 91A-1-201 (24)

Joinder of requests for relief in single proceeding authorized, 91A-3-107

Limitation of actions, 91A-3-108, 91A-3-109

- decendent's cause of action, 91A-3-109
- probate, appointment and testacy proceedings, 91A-3-108

Notice of filing or order, demand by interested person, procedure, effect of failure to give notice, 91A-3-204

Orders entered with required notice binding on persons interested, 91A-3-106

Personal representative, appointment required for administration, 91A-3-103—See PERSONAL REPRESENTATIVES

Persons interested in estate, proceedings by, 91A-3-105

Rules of civil procedure, application to probate proceedings, M. R. Civ. P., Rule 81(a)

Scope and nature of proceedings, 91A-3-107

Secured creditor, enforcement of claim without administration, 91A-3-104

Subsequent administration of newly discovered estate property, 91A-3-1009

Supervised administration, 91A-3-501 to 91A-3-505

- duties of supervised personal representative, 91A-3-501—See PERSONAL REPRESENTATIVES
- interim orders issued by court pending proceedings, 91A-3-505
- joinder with petition for other relief authorized, 91A-3-502
- nature of proceedings, 91A-3-501
- order directing supervised administration, findings required, 91A-3-502
- effect of order on other proceedings, 91A-3-503
- powers of supervised personal representative, 91A-3-504
- termination of administration, 91A-3-505

INDEX

References are to Title and Section numbers

PROBATE AND ADMINISTRATION PROCEEDINGS (Continued)

Venue of proceedings, 91A-3-201

domicile determination, conflict of laws, 91A-3-202

PROBATE CODE

See UNIFORM PROBATE CODE

PROBATION, PAROLE AND CLEMENCY

Board of pardons, existence and composition, 82A-804

access of board to prisoner, 94-9834 redes. 95-3216

administrative duties of board, 95-3204(1)

allocation to department for administrative purposes, exception, 82A-804(3)

designation as quasi-judicial board, 82A-804

legal adviser to board, 94-9827 redes. 95-3209

majority vote required for decision, 95-3206

meetings of board, 95-3204(2)

orders of board, effect, 95-3206

parole authority of board, procedure, 95-3214

principal office, location, 95-3204(3)

records and reports, confidentiality, 95-3206

subpoena power, 95-3218

Citation of act, 95-3203

Conditionally released prisoner considered on parole until expiration of maximum term, 95-3215

Criminal procedure, sentence and judgment, 95-2201 to 95-2216—See **CRIMINAL PROCEDURE**, Sentence and judgment

Definitions, 95-3205

Department of institutions, powers and duties, 95-3302

duties of department, 95-3303

parolees, assistance to, 95-3307

supervision duties, 95-3304, 95-3306

parolees, 95-3306

persons on probation, 95-3304

Eligibility for parole, 95-3214 (1) (a)

Executive clemency, governor's power, 1972 Const., VI, 12

board to investigate, advise and approve, 95-3223

decision of board, time for making, 94-9847 redes. 95-3229

hearing on application, order of board, form, publication, 95-3224

publication not necessary in certain cases, 95-3228

juvenile probation or parole, law inapplicable to, 94-9850 redes. 95-3232

report of governor to legislative assembly, 94-9849 redes. 95-3231

respite after conviction, power of governor to grant, 94-9848 redes. 95-3230

Juvenile cases, law not applicable to, 95-3309

Juvenile probation officers, travel expenses; reimbursement for, 10-622

Life sentence, parole eligibility of person serving, 95-3214 (1) (b)

Pardon as restoring civil rights of offender, 95-2227

Parolees, departmental assistance to, 95-3307

Persistent felony offender designation affecting parole eligibility, 95-2206.5

definition, 95-2206.5

eligibility for parole, 95-3214 (1) (a)

Probation and parole officers appointed by department, 95-3302

qualifications of officers, present employees exempt, 95-3302.1

Retaking or re-incarceration of parolee or probationer under interstate compact, procedure, 95-3202.1

administrator as hearing officer, 95-3202.2

record of hearing in another state, effect, 95-3202.4

rights of parolee or probationer on hearing, 95-3202.3

Violators of probation or parole, arrest and return, 95-3305, 95-3308

parole violators, 95-3308

probation violators, 95-3305

PROCESS

Amendment of process, when permitted, M. R. Civ. P., Rule 4 D(7)

INDEX

References are to Title and Section numbers

PROCESS (Continued)

- Criminal procedure, summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
- Motion to raise question of insufficiency, M. R. Civ. P., Rule 12(b)
- Service, M. R. Civ. P., Rule 4 D—See SERVICE OF PROCESS
- Summons, M. R. Civ. P., Rule 4 C—See SUMMONS

PRODUCE WHOLESALERS

See AGRICULTURE, Produce wholesalers

PROFESSIONAL SERVICE CORPORATIONS

- Advertising prohibited, 15-2112
- Annual report, required contents, 15-2115
- Business of corporations restricted to professional services, 15-2108
- Capital stock, restrictions on holdings, 15-2109
- Certified public accountants, incorporation authorized, 66-1829—See PUBLIC ACCOUNTANTS, Incorporation
- Citation of act, 15-2102
- Consolidation and merger of corporations, restrictions, 15-2114
- Definition of terms, 15-2103
- Directors, number required, 15-2113
- Disqualification of agent to practice profession, severance of connection with corporation, 15-2110
- Dissolution of corporation for noncompliance, 15-2110
- Ethical standards for professional conduct unimpaired by act, 15-2107
- General corporation law, application, 15-2114
- Individual liability for professional acts unaffected by incorporation, 15-2107
- Investment of surplus funds permitted, 15-2108
- Legislative intent, 15-2101
- Liability of corporation for acts of agents while rendering professional services, 15-2107
- Previously existing corporations, application of act to, 15-2104
- Property ownership restricted to that necessary for professional services, 15-2108
- Public accountants, incorporation authorized, 66-1831.1—See PUBLIC ACCOUNTANTS, Incorporation
- Purposes for which corporations organized, 15-2105
- Redemption of shares by corporation, provision for, 15-2111
- Regulatory acts unaffected by act, 15-2116
- Securities law unaffected by act, 15-2116
- Services to be rendered through licensed officers and agents, 15-2106
- Short title of act, 15-2102
- Transfer of shares, restrictions on, 15-2111
- Voting trust agreements prohibited, 15-2109

PROHIBITION

- Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

PROMISSORY NOTES

See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

PROPERTY

- Coroner, disposition of property found on body, 95-810
- Deception or threat, causing execution of conveyance by, deceptive practice, punishment, 94-6-307
 - "deception" defined, 94-2-101(11)
- False or deceptive statement promoting or procuring sale of property as deceptive practice, punishment, 94-6-307
- Homestead and exemption laws required, 1972 Const., XIII, 5
- Injury, damage or destruction of another's property as criminal mischief, punishment, 94-6-102—See CRIMINAL OFFENSES, Property
- Justifiable use of force in defense of property, 94-3-104
 - occupied structures, 94-3-103

INDEX

References are to Title and Section numbers

PROPERTY (Continued)

Pension trusts

- statutory and common law limitations inapplicable to, 67-423
- validity, 67-424

Perpetuities prohibited except for charitable purposes, 1972 Const., XIII, 6

Personal property

- accessions to personal property, effect of Uniform Commercial Code, 67-1410
- lost or mislaid property, obtaining control over as theft, 94-6-303—See THEFT
- partition or sale authorized, 93-6301.1
 - county in which action shall be brought, 93-6301.1
 - procedure, 93-6301.2

Principal and income act, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

Real property

- action for damages from construction of improvements, statute of limitations, 93-2619 to 93-2623

co-ordinate system used in describing property, 67-2011 to 67-2019—See CO-ORDINATE SYSTEM

corner recordation

- certification and signing of records filed, 67-2009
- citation of act, 67-2001
- county clerk and recorder, duties concerning filing, 67-2007
- definition of terms, 67-2003
- form and contents of filing prescribed by board, 67-2006
- permitted filing of property corners, 67-2005
- previously established corners, filings concerning, 67-2010
- purpose of act, 67-2002
- reconstruction and rehabilitation of monument, 67-2008
- required filing of corners and monuments established, 67-2004

fixtures, priority of security interest, 87A-9-313

joint tenancy created by direct conveyance, 67-1602.1

- licensees for recreational purposes, restricted liability to, 67-808
 - definition of recreational purposes, 67-809

liens excluded from Uniform Commercial Code, 87A-9-104

persons who may purchase state lands, 81-908

subdivided lands, sale or lease outside state

- additional information required by board, 67-2105
- fee for filing of questionnaire, 67-2106

blanket encumbrances

definition, 67-2109

protection of purchasers and lessees, provisions for, 67-2110

bond for protection of purchasers and lessees, 67-2110

change of address or depository, notice to board, 67-2113

contracts for sale of property, required contents, 67-2111

desist and refrain orders, 67-2114

escrow arrangements for protection of purchasers and lessees, 67-2110

fees payable to department, 67-2106

deposit and use of fees, 67-2106

notice of intention, filing fee, 67-2104

questionnaire filing fee, 67-2106

findings of board not to be used in advertising, 67-2108

inspection of records by board, 67-2113

investigation by board of subdivisions offered, 67-2107

multiple sales or leases, notice to board, 67-2112

notice to board of intention to offer lands, contents, 67-2103

rules and regulations, 67-2102

size of tracts to which act applies, 67-2101

statute of limitations, application to actions arising from, 67-2115

title held in trust for protection of purchasers and lessees, 67-2110

tracts to which act applies, 67-2101

violations construed as misdemeanors, 67-2116

subdivided lands situated outside state, sale or disposition within state

board of real estate as administrative agency, 67-2118

powers and duties of board, 67-2126 to 67-2128

INDEX

References are to Title and Section numbers

PROPERTY (Continued)

Real property (Continued)

subdivided lands situated outside state (Continued)

- civil remedy, 67-2132
- definition of terms, 67-2117
- exemptions, 67-2119
- fee for registration, deposit, use, 67-2118
- penalties, 67-2131
- process, service in actions arising under act, 67-2135
- prohibitions, 67-2120
- registration, 67-2121 to 67-2124
- revocation of registration, 67-2129
- subdivider's annual report, 67-2125

unit ownership of buildings

- access to units for maintenance and repair work, 67-2311
- actions to enforce rights under act, 67-2338
- alterations jeopardizing property prohibited, 67-2309
- blanket mortgages and liens, release on conveyance or lease of unit, 67-2323
- bylaws, adoption, recording and amendment, 67-2320
 - compliance with bylaws required of unit owners, 67-2313
 - contents of bylaws, 67-2321
- common elements of building
 - access to units to prevent damage to common elements, 67-2311
 - expenses for common elements, charging to unit owners, 67-2308
 - foreclosure of liens for common expenses, 67-2327
 - grantor and grantee jointly liable for unpaid expenses, 67-2330
 - liability for contributions not to be avoided by waiver, 67-2312
 - lien of association for common expenses, 67-2326
 - purchaser at foreclosure sale not liable for expenses, 67-2329
 - records and accounts of expenses, 67-2325
 - rent paid by unit owner after foreclosure of lien, 67-2328
 - maintenance of common elements as provided by bylaws, 67-2311
 - partition of common elements prohibited, 67-2307
 - percentage of common elements held by unit owners, 67-2306
 - profits from common elements, distribution, 67-2308
 - separation from unit ownership prohibited, 67-2307
 - undivided interest held by unit owners, 67-2306
 - use of common elements, rights of unit owners, 67-2310
- compliance by unit owners with bylaws, rules and regulations, and covenants required, 67-2313
- conveyance or lease of individual units permitted, 67-2304
 - contents of deed or lease, 67-2322
- damage to or destruction of building, repair, reconstruction or removal from act, 67-2334
- declaration required to subject building to unit ownership, 67-2303
 - agent of department of revenue to approve declaration before recording, 67-2317
 - contents of declaration, 67-2314
 - definition of declaration, 67-2302
 - preliminary declaration, filing, 67-2315
 - recording of declaration and certified copy, 67-2318
- definition of terms, 67-2302
- encumbrance of individual units permitted, 67-2304
- exclusive ownership and possession of individual units, 67-2305
- exemptions from execution, application to units, 67-2341
- floor plans recorded with declaration, contents, 67-2319
- injunctive relief against violations, 67-2343
- insurance of building against loss or damage, 67-2331
- investigation of violations by department, 67-2343
- liens against units, manner of attachment and release, 67-2324
 - blanket lien, release from on conveyance or lease of unit, 67-2323
 - common expenses, lien for, 67-2326
 - foreclosure of liens for common expenses, 67-2327

INDEX

References are to Title and Section numbers

PROPERTY (Continued)

Real property (Continued)

unit ownership of buildings (Continued)

liens against units (Continued)

purchaser at foreclosure not liable for common expenses, 67-2329

rent payable by unit owner after foreclosure of lien, 67-2328

mortgage of individual units permitted, 67-2304

name of property, restrictions on, 67-2316

obsolete property, renewal, restoration or sale, 67-2333

organization of unit owners prescribed by bylaws, 67-2321

preliminary declaration filed before construction, 67-2315

recording of declaration, 67-2318

removal of property from provisions of act

common ownership by unit owners results, 67-2335

lienholders' consent required, 67-2332

partition proceedings by unit owner after removal, 67-2336

resubmission to act permitted after removal, 67-2337

renewal and restoration of obsolete property, 67-2333

sale of building after removal from act, 67-2336

sale of individual units permitted, 67-2304

sale or lease of units prior to completion of construction, 67-2303.1 to 67-2303.6

changes in building plans, refund of purchaser's funds, 67-2303.4

contract of sale not binding until purchaser receives final report, 67-2303.4,
67-2303.6

deposit of proceeds in escrow, 67-2303.1 (1)

disbursements from escrow fund, restrictions on, 67-2303.1 (2) to (4)

examination of project by department following notice of intent to sell,
67-2303.3

fees to be paid by developer, 67-2303.2

final report of department, requirements for, 67-2303.5

notice of intention to sell by developer, 67-2303.2

service of process with respect to two or more units, 67-2338

agent to receive process named in declaration, 67-2314

change of agent for service of process, 67-2339

short title of act, 67-2301

taxation of units, 67-2340

exemptions from taxation, application, 67-2341

rules and regulations for appraisal and assessment, 67-2342

violation as misdemeanor, punishment, 67-2344

Right of persons to acquire, possess and protect, 1972 Const., II, 3

Search and seizure, disposition of seized property, 95-1712 to 95-1716

State liability for injury to person or property, 1972 Const., II, 18

Theft of property, 94-6-201 to 94-6-214—See THEFT

Unclaimed property

attorney-general to assist in regulation, 67-2226

bank deposits and funds, when presumed abandoned, 67-2202

business association deposits and funds, when presumed abandoned, 67-2202

checks, deposits and money orders, when presumed abandoned, 67-2202

citation of act, 67-2230

claim for property delivered to department of revenue, filing, 67-2219

hearing and determination of claim, 67-2220

judicial review of department's determination, 67-2221

conflict of laws, 67-2227

co-operative association distributions, when presumed abandoned, 67-2205

corporate stock or distributions, when presumed abandoned, 67-2205

court, when property held by presumed abandoned, 67-2208

definition of terms, 67-2201

delivery of property to department of revenue, 67-2213

action to compel delivery, 67-2224

dissolution of corporate enterprise, when distributions presumed abandoned, 67-2206

examination of records of persons required to report, 67-2223

fiduciary property, when presumed abandoned by beneficiary, 67-2207

income or increment after delivery to department, owner not entitled to, 67-2215

INDEX

References are to Title and Section numbers

PROPERTY (Continued)

Unclaimed property (Continued)

- insurance funds, when presumed abandoned, 67-2203
- limitation statutes not affecting duties under act, 67-2216
- money orders, when presumed abandoned, 67-2202
- nonresident owner, reciprocal provisions eliminating presumption of abandonment, 67-2210
- notice by department to apparent owner, contents, 67-2212
- payment of funds to department, 67-2213
- penalties for violations of act, 67-2225
- presumption of abandonment for property not otherwise covered, 67-2209
- publication of lists by department, contents, 67-2212
- public officer or agency, when property held by presumed abandoned, 67-2208
- refunds by department after payment by holder to another, 67-2214
- relief from liability by payment or delivery to department, 67-2214
- report by custodian to department, contents and filing, 67-2211
- rules and regulations, 67-2226
- sale of property by department, 67-2217
 - disposition of proceeds of sale, 67-2218
- seized property in criminal cases, disposition of, 95-716
- severability of provisions of act, 67-2228
- short title of act, 67-2230
- small amounts, declination or postponement of possession by department, 67-2222
- uniformity of interpretation of act, 67-2229
- utility deposits and refunds, when presumed abandoned, 67-2204

Unsolicited goods deemed a gift, 67-1706.1

PROSTITUTION

See CRIMINAL OFFENSES, Prostitution

PROTECTED PERSONS

See CHILDREN AND MINORS; INCAPACITATED PERSONS

PROTECTIVE PROCEEDINGS

Conservator appointed or protective order issued upon determination by court, 91A-5-401 to 91A-5-431

- acceptance of appointment as submission to jurisdiction of court, 91A-5-413
- accounting to court by conservator, 91A-5-419
- appointment not transfer or alienation restricted by statute or contract, 91A-5-420
- bond of conservator, amount, securities in lieu of bond, 91A-5-411
 - terms of bond, liability of sureties, 91A-5-412
- claims against estate or protected person, presentation, judicial determination, payment, 91A-5-428
- compensation for services rendered in proceedings, 91A-5-414
- conflict of interest transaction without court approval voidable, 91A-5-422
- contract liability of conservator, 91A-5-429
- death of protected person, duties of conservator, 91A-5-425 (5)
- death, resignation or removal of conservator, appointment of successor, 91A-5-415
- estate plan to be observed by conservator and court, 91A-5-427
- fiduciary responsibilities of conservator, 91A-5-417
- hearing on petition, procedure, 91A-5-407
 - permissible court orders, 91A-5-408
- incapacitated persons, findings required, 91A-5-401 (2)
- individual liability of conservator, 91A-5-429
- inventory verified by conservator, preparation and filing, copy to protected person, 91A-5-418
- jurisdiction of court, 91A-5-402
- letters as evidence of transfer of assets to conservator, 91A-5-421
 - filing or recording of letters of conservatorship, 91A-5-421
 - "letters" defined, 91A-1-201 (24)
- married person as conservator, 36-127
- minors, findings required, 91A-5-401 (1), 91A-5-407

INDEX

References are to Title and Section numbers

PROTECTIVE PROCEEDINGS (Continued)

- Conservator appointed or protective order issued (Continued)
 - notice of proceedings, persons to be served, 91A-5-405
 - request for notice by interested person, 91A-5-406
 - orders subsequent to appointment, petitions for, 91A-5-416
 - order terminating conservatorship as evidence of transfer of assets, 91A-5-421
 - payment or delivery to foreign conservator discharges debtor or possessor, procedure, 91A-5-431
 - persons assisting or dealing with conservator protected, 91A-5-423
 - persons who may be appointed conservator, priorities, 91A-5-410
 - petition for appointment or protective order, persons eligible to file, contents, 91A-5-404
 - physical check of estate, power of court to order, 91A-5-419
 - powers and duties of conservator, 91A-5-424 to 91A-5-426
 - administrative powers, 91A-5-424
 - distributive powers and duties, 91A-5-425
 - enlargement or limitation of powers by court, 91A-5-426
 - estate plan to be observed by conservator and court in exercise of powers, 91A-5-427
 - records required of conservator, 91A-5-418
 - termination of conservatorship, petition, hearing, procedure, 91A-5-430
 - title of trustee vested in conservator, 91A-5-420
 - tort liability of conservator, 91A-5-429
 - venue of proceedings, 91A-5-403
- "Protected person" defined, 91A-5-101 (3)
- Protective arrangements without appointment of conservator authorized, 91A-5-409
- "Protective proceedings" defined, 91A-5-101 (2)
- Special conservator, when appointment authorized, 91A-5-409 (3)
- Surviving spouse as protected person, order of court required for election of elective share, 29A-2-203

PSYCHOLOGISTS

- Board of psychologists, existence, composition, appointment, qualifications and terms of members, 82A-1602.27
 - additional powers and duties of board, 66-3207
 - allocation to department for administrative purposes, 82A-1602
 - attorney general assisting board, 66-3205
 - expenses of board members, 66-3205
 - meetings of board, 66-3205
 - recommendations to governor and state officials, 66-3207
 - rules of board, 66-3205(3)
 - seal of board, 66-3205
- Complaints against licensees, hearing by board, 66-3207
- Definition of terms, 66-3202
- Exempt activities of psychological nature, 66-3203
- Injunction against unlawful practice, 66-3214
 - board power to prosecute, 66-3207
- Insurance coverage not to restrict freedom of choice of practitioner, 40-4108
- Legislative findings on practice, 66-3201
- License required to practice psychology, 66-3203
 - application for license, 66-3208
 - criminal offenders, licensing, 66-4001 to 66-4005
 - examination of applicants for license, 66-3206
 - exempt activities, 66-3203
 - expiration and renewal of licenses, 66-3206
 - fees for licenses and renewals, 66-3211
 - injunction against unlawful practice, 66-3214
 - issuance of license, 66-3206
 - list of licensees published annually, 66-3206
 - out-of-state licensees, issuance without examination, 66-3208
 - qualifications of licensees, 66-3208
 - revocation or refusal of license, grounds, 66-3209
 - board power, 66-3207
 - notice and hearing, 66-3209

INDEX

References are to Title and Section numbers

PSYCHOLOGISTS (Continued)

- List of licensed psychologists, annual publication, 66-3206
- Malpractice, statute of limitations, 93-2624
- Penalties for violation of act, 66-3213
- Practice of psychology, definition and scope, 66-3202
 - drugs, surgery and shock therapy not authorized, 66-3214
- Privileged communications between psychologist and client, 66-3212
 - school psychologist and student, 93-701-4
- Purpose in regulating practice, 66-3201
- Rules and regulations, 66-3205
- Social psychologists, persons authorized to use term, 66-3203
- Studies and research by board, 66-3207
- Violation of act, penalty for, 66-3213
 - prosecution by board, 66-3207

PUBLIC ACCOMMODATIONS

- Discrimination, freedom from as civil right, 64-301
 - discriminatory practices unlawful, 64-304 to 64-312—See CIVIL RIGHTS, Discriminatory practices
- Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831

PUBLIC ACCOUNTANTS

- Annual licenses, 66-1833
- Annual registration of offices, 66-1832
- Board of public accountants
 - administrative services provided by department, 82A-1603
 - allocation to department for administrative purposes, 82A-1602
 - appointment, qualifications, removal and terms of members, 82A-1602.2
 - compensation and expenses of members, 66-1815
 - continuation in office of board members, 82A-1606
 - employment of personnel for board, 82A-1604
 - existence and composition of board, 82A-1602.2
 - legal assistance in hearings by board, 82A-1604
 - moneys collected by department, deposit and use by board, 66-1816
 - officers, annual election, 66-1815
 - quorum for transaction of business, 66-1815
 - records of board kept by department, certified copies as evidence, 66-1815
 - retention of functions by board, 82A-1605
 - rules, adoption, 66-1815
 - rules for professional conduct, powers of board, procedure, 66-1817
 - seal of board, 66-1815
- Certified public accountants, 66-1819, 66-1823 to 66-1825
- Corporations for practice of accountancy, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATION
- Criminal offenders, licensing, 66-4001 to 66-4005
- Definition of terms, 66-1807.1
- Disciplinary proceedings, 66-1834 to 66-1837
- Examination of applicants for certification, 66-1818
- Incorporation
 - certified public accountants, registration, requirements, 66-1829.1
 - public accountants, registration, requirements, 66-1831.1
 - revocation of registration, grounds, notice, hearing, 66-1835
- Investment advice exempt from securities act, 15-2004
- Partnerships, registration of
 - certified public accountant, 66-1829
 - public accountant, 66-1831
 - revocation or suspension of registration, notice, hearing, 66-1835
- Registration, 66-1820, 66-1821
- Unlawful acts, 66-1838
 - exceptions, 66-1839
 - misdemeanor penalty, 66-1840

INDEX

References are to Title and Section numbers

PUBLIC ADMINISTRATORS

Fees, 25-237

PUBLICATION

Freedom of speech, expression, and press, 1972 Const., II, 7

Legislative proceedings, sale of copies, 43-901 to 43-904—See LEGISLATURE,

Publication of proceedings

State publications distribution center, 44-132 to 44-139—See LIBRARIES

PUBLIC BUILDINGS

Architects to carry errors and omissions insurance, 66-114

Construction programs for state buildings

architects and consulting engineers, appointment, 82-3319

restrictions on architectural work by state, 82-3320

buildings subject to control, 82-3314

definition of terms, 82-3314

emergency repairs and alterations authorized by governor, 82-3316

legislative consent, when required for construction, 82-3316

pecuniary interest prohibited to controller and employees, 82-3321

powers of controller in supervising construction, 82-3318

submission of programs to controller, governor and legislative assembly, 82-3315

supervision of construction by controller, 82-3317

university buildings, authority of regents and governor, 82-3316

Contracts to be let by competitive bidding for construction or improvement, 82-1131

inapplicable to inmate labor at institutions, 82-1131.1

institutions exempt, 82-1131.1

purchasing functions unaffected, 82-1136

Heating, native coal preferred, 82-1904.1

use of other fuels not prohibited, 82-1904.2

Insurance proceeds from damaged buildings, deposit and use, 78-1101

Rental contracts with option to purchase authorized, 82-3315.1 to 82-3315.8—See DEPARTMENT OF ADMINISTRATION, Building programs

Sanitary inspections and correction of conditions by boards of health, 69-4118

Space assignment by department of administration, 82-3308

State capitol improvement and repair, 78-737 to 78-746—See STATE CAPITOL,

Building improvement and repair

PUBLIC CONTRACTORS

See also STATE PURCHASING DEPARTMENT AND AGENT

Incomplete contracts, additional bids limited, 82-1927

bid to show bidder not working beyond contract time, 84-3507

excusable delays exempt, 82-1928

Licenses

additional license fees, 84-3505

amount allocated to subcontractor, notice to department, 84-3505(5)

penalty for failure to file license return, 84-3516

refunds of overpayments, 84-3513

rules and regulations, board of equalization to establish, 84-3515

tax credits allowed, 84-3514

withholding of payments, 84-3513

bids to show license number and class, 84-3507

classes of licenses, 84-3505

definition of terms, 84-3501

residency for preference, determination of, endorsement upon license, 82-1925.1

Preference to Montana bidders

contract provision for preference to Montana materials and labor, 82-1926

definition of residence, 82-1925

determination of residency by state board of equalization, 82-1925.1

federal aid projects, application to, 82-1926

percentage differential, 82-1924

Substitution of governmental obligations for withheld payments due contractors, 82-4101 to 82-4104

INDEX

References are to Title and Section numbers

PUBLIC DEFENDERS

Authority of counties to establish and maintain offices, 95-1006

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial valuation of assets and liabilities to be made biennially, 68-1804
rate of interest earned on retirement fund to be determined periodically, 68-1804

Board of administration continued in department of administration, 82A-210

annual report to governor, contents, 68-1803

appointment of committee authorized, 68-1801

attorney general as legal counsel, 68-1801

compensation of administrator and employees, 68-1801

election of president, 68-1801

employment of actuary authorized, duties, 68-1804

office, location, 68-1801

per diem and expenses of members, 68-1802

powers and duties generally, 68-1803

quorum of board, 68-1801

rules and regulations, 68-1803

Change of status of employees, report by employers, 68-2512

Contracts with municipalities, counties or public agencies for participation in system, 68-1701 to 68-1704

approval of contract by legislative body, vote required, 68-1701 (1)

contents and formal requirements of contract, 68-1701

conversion of local or state retirement plan, 68-1703

majority vote of affected employees required, 68-1701 (1)

request for participation by individual employee, duties of legislative body, 68-1702

resolution of intent to be adopted by legislative body of contracting employer, 68-1701 (1)

special tax levy to meet employer's obligation under system, 68-1704

Contributions

administrative expense contributions of employer, 68-1904

employer contributions, rates, actuarial determination, 68-2504

adjustment of errors, 68-2509

Budget Act superseded, 68-2508

departmental budgeting and appropriation of funds, 68-2505

municipal, county or public agency employer, tax levy to meet obligations, 68-1704

payment of employer contributions, 68-2505, 68-2507

transfers between funds, 68-2506

member contributions, rate, deduction from salary or wage, 68-1902

additional member contributions for additional benefits, 68-1903

credit for employer contributions made in lieu of wages under collective bargaining agreement, 68-1602(8)

redeposit of contributions upon reinstatement of membership, 68-1906

refund of contributions upon termination of service, 68-1905

Cost of living increases in benefits, 68-2513

Creation and establishment of system, 68-1502

Criminal investigator's office covered, 82-418

Death benefits

amount, 68-2302

beneficiaries, 68-2401, 68-2402

beneficiary designated, 68-2401 (1)

estate as beneficiary, 68-2401 (1)

minor beneficiaries, 68-2402

next of kin, order of payment, 68-2401 (1) (2)

undertaker, direct payment to, 68-2401 (3)

eligibility, 68-2301

estimate of allowance by board, when authorized, 68-2503

exemption from legal process, 68-2502

optional benefits, election by beneficiary, 68-2303

survivorship allowance in lieu of other benefits, 68-2304, 68-2305

amount of allowance, 68-2305

INDEX

References are to Title and Section numbers

PUBLIC EMPLOYEES' RETIREMENT SYSTEM (Continued)

Death benefits (Continued)

- survivorship allowance (Continued)

- eligibility, 68-2304

- monthly installments, when combining authorized, 68-2501

Deferred compensation plan, retirement benefits unaffected by, 68-2706—See DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

Definition of terms, 68-1503

Disability retirement

- amount of allowance, 68-2103, 68-2104

- duty-related disability, 68-2103

- earnings reduction, 68-2202

- nonduty-related disability, 68-2104

- workmen's compensation reduction for duty-related disability, 68-2103

- application for allowance, time of filing, 68-2102

- cancellation of allowance, grounds, reinstatement of recipient, 68-2201

- failure to re-employ following cancellation as discontinuance of employment, 68-2201

- re-employment, recalculation of benefit, 68-2204

- commencement of allowance, 68-2102

- conversion of allowance to optional benefits, 68-2203

- definition of terms, 68-2101

- determination of disability by board, 68-2101

- eligibility, 68-2101

- estimate of allowance by board, when authorized, 68-2503

- exemption of allowance from legal process, 68-2502

- medical examination may be required of recipient, 68-2201

- refusal to submit as ground for cancellation of allowance, 68-2201

- monthly payments, combining installments, 68-2501

- reduction of allowance by earnings, 68-2202

Dormant savings accounts transferred to pension accumulation fund, 68-1907

Excess administrative expense as charge to appropriation from general fund, 68-1802

Game wardens, 68-1401 to 68-1429—See FISH AND GAME, Wardens for enforcement of laws

Judges' retirement fund, payments into, investment, 93-1111

Membership in system, persons included, 68-1601

- exclusions from membership, 68-1602

- federally subsidized employees, 68-2510

- "member" defined, 68-1503

- municipal, county or public agency employees, 68-1701 to 68-1704

- national guard employees, 68-2510

- re-entry into service, 68-1601

- seasonal employees, 68-1601

- termination of membership, 68-1603

Police reservists in cities of first and second class, state-wide fund established, 11-1838

—See CITIES AND TOWNS, Police department

Previously conferred benefits retained, 68-2514

Purpose of law, 68-1501

Referendum under Social Security Act, certification by governor, 59-1102.1

Retirement fund

- contributions to fund, 68-1902 to 68-1904, 68-2504 to 68-2507—See Contributions, above

- administrative expense contributions, 68-1904

- employer contributions, rates, 68-2504

- member contributions, 68-1902, 68-1903

- dormant savings accounts transferred to pension accumulation fund, 68-1907

- income to be retained in fund as reserve against contingencies, 68-1901

- interest in or borrowing from fund by member or employee prohibited, 68-1901

- investment of fund, 68-1901

- management of fund, 68-1901

- state treasurer as custodian, 68-1901

INDEX

References are to Title and Section numbers

PUBLIC EMPLOYEES' RETIREMENT SYSTEM (Continued)

Service credits

- absence from compensated employment, time not allowed, 68-1604
- cancellation of credit upon refund of contributions, 68-1603
- conversion of service to creditable service, procedure, payment of contributions, 68-1607
- “creditable service” defined, 68-1503 (28)
- illness or injury, credit for absence due to, 68-1606
- military service, credits for, 68-1605
 - election to qualify for full credit, 68-1605.1
- prior service not previously credited, 68-1608
- school district employees, absence during official vacation, 68-1601
- teachers' retirement system, transfer of credits to and from, 68-2511

Service retirement

- amount of allowance, computation, 68-2003
 - prior service adjustment, 68-2004
- commencement of allowance, 68-2002
- conversion of allowance to optional benefits, 68-2003
- early retirement, eligibility, 68-2001
 - amount of allowance, 68-2005
- eligibility, 68-2001
- estimate of allowance by board, when allowed, 68-2503
- exemption of allowance from legal process, 68-2502
- monthly payments, combining installments, 68-2501
- re-employment following retirement, recalculated benefit, 68-2204

Sheriffs' retirement system, 68-2601 to 68-2629—See SHERIFFS, Retirement system

Short title, 68-1504

Vehicle equipment safety commission employees, agreement for coverage, 32-21-170

PUBLIC FINANCE

Bonds of political subdivisions, maximum interest paid, 79-2602

- definition of terms, 79-2601

Bond validating act

- definitions, 79-2002
- pending actions, act inapplicable to, 79-2004
- short title, 79-2001
- validating provisions, 79-2003

Budget—See State finance, state budget act, below

Cities and towns

- bonds
 - board of investment as purchaser, delivery and payment, 11-2319
 - notice of sale, secretary of board of investments to receive, 11-2314
 - resolution to issue bonds, when election required, 11-2307.1
- municipal revenue bond act of 1939, supervision by department of health and environmental sciences, 11-2412

County bond issues—See COUNTIES, Bond issues

Expenditures, strict accountability of state and local governmental entities, 1972 Const., VIII, 12

appropriation and issuance of warrant required, 1972 Const., VIII, 14

Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

Highway revenues, restrictions on use, 1972 Const., VIII, 6

Indebtedness

- local government debt limitations fixed by legislature, 1972 Const., VIII, 10
- state debt, vote required for creation of, creation to cover deficits prohibited, 1972 Const., VIII, 8

Investment of public funds, 1972 Const., VIII, 13

Legislative audit committee and legislative auditor, 79-2301 to 79-2315—See LEGISLATIVE AUDIT ACT

Limitation of actions and defenses relating to issuance of bonds, 93-2612

INDEX

References are to Title and Section numbers

PUBLIC FINANCE (Continued)

- Moneys received from federal government under flood control act
 - distribution to counties, 79-2101
 - expenditure of funds by counties, 79-2102
- Post war planning and construction reserve fund abolished, 79-416
- Revenue bond refunding bonds, terms and negotiability, 79-1905
- Road and bridge bonds, 32-3801 et seq.—See HIGHWAYS, BRIDGES AND FERRIES, County bonds
- Special assessments levied by political subdivisions, rate of interest, 79-2603
- State budget act, inapplicable to certain work on state capitol and supreme court and law library building, 78-1209
- State controller—See STATE CONTROLLER
- State finance
 - appropriation accounting procedures established by state controller, 82-109
 - appropriations not to exceed anticipated revenue, 1972 Const., VIII, 9
 - budget—See state budget, below
 - claims against the state
 - assignment of claims, 83-901 to 83-904
 - authorization for payment given by agency concerned, record and formal requirements, 82-109.1
 - certification by head of department, 82-109.1
 - disapproval by department, returned to agency with explanation, 82-109.3
 - forms prescribed by department, 82-109.3
 - pre-audit of liquidated claims, 82-109.2
 - records maintained by departments, 82-109.1
 - rules prescribed by department for processing of claims, 82-109.3
 - tort claims, 82-4301 to 82-4327—See STATE OF MONTANA, Tort claims
 - unliquidated claims, transmittal to board of examiners, 82-109.2
 - collection service for debts owing state agencies, 84-7101 to 84-7111—See STATE DEBT COLLECTION SERVICE
 - contingent revolving accounts for state institutions and agencies, 79-602
 - deposit of receipts by state agencies with treasurer or depository, 79-306, 82-110
 - depositories of state funds
 - board continued in department of administration, 82A-209
 - bonds and securities pledged as collateral, 79-306
 - building and loan associations and savings and loan associations as eligible depositories, 79-301, 79-306
 - deposits by state agencies with depositories, 79-306
 - eligible depositories, 79-301
 - securities acceptable as pledge for deposits, 79-307
 - substitution of collateral by depository, 79-301
 - emergency and disaster expenditures authorized by governor, 79-2501
 - implementation and administration of program, 79-2503
 - maximum expenditure in biennium, 79-2502
 - expenditures in excess of income prohibited, 79-901
 - penalty for violations, 79-904
 - expert on financial matters, appointment by board of land commissioners, salary for services, 79-1202
- Federal Assistance Management Act, 79-2701 to 79-2708
 - acceptance of federal funds by governor authorized, 79-2705
 - application for federal assistance funds, approval of governor required, 79-2706
 - budget amendment required to make funds available, 79-2707
 - definition of terms, 79-2703
 - designation by governor of state agency to administer federal assistance program, 79-2705
 - “federal assistance programs” defined, 79-2703
 - management of federal assistance programs, duties of budget director, 79-2704
 - purpose of act, 79-2702
 - reports by participating state agencies, 79-2708
 - short title, 79-2701

INDEX

References are to Title and Section numbers

PUBLIC FINANCE (Continued)

State finance (Continued)

- federal funds, distribution of service agency indirect costs among grantee agencies, 79-1020 to 79-1022
 - definition of terms, 79-1020
 - "grantee agency" defined, 79-1020 (1)
 - indirect cost rates to be negotiated by grantee agency in accordance with federal regulations and guidelines, 79-1022
 - "indirect costs" defined, 79-1020 (3)
 - "service agency" defined, 79-1020 (2)
 - state-wide plan allocating costs to grantee agencies, 79-1021
- financial control system established by department, purpose, 82-109
 - assistance to legislative assembly in fiscal matters, 82-111
 - claims against state, procedures for processing and payment, 82-109.1 to 82-109.3—See claims against state, above
 - "department" defined, 82-108.1
 - expenditure procedures to be established, 82-109 (4)
 - expenditures to be applied against specific funds before application to general fund appropriations, 82-109 (2)
 - officers and employees of agencies to co-operate in examinations by department, penalty for failure, 82-110
 - plan for improvements and economies to be developed, 82-110
 - quarterly allotment system authorized upon approval of governor, basis for distribution, 82-109 (3)
 - salary schedules maintained by department, purpose, 82-109.4
 - uniform accounting system prescribed, procedures included, 82-110
- fire insurance fund abolished, 79-416
- institutional support
 - appropriation of income from endowments and grants for support of institutions, 79-601
 - contingent revolving accounts, establishment by controller, 79-602
 - retention of income and deposits by institutions, 79-603
- investment of funds not immediately needed, 79-305
- investment of funds, unified plan, 1972 Const., VIII, 13; 79-308 to 79-311
 - accounting for and maintenance of separate funds, 79-309
 - account of each investment fund to be kept by state treasurer, 79-308
 - administration by board of investments, powers, 79-308
 - board of investment created, 82A-204
 - criteria for investment, 79-308
 - deduction of cost from income, 79-308
 - local government funds, investments of, 79-311
 - permissible investments, 79-310
- permanent grants to state institutions
 - disbursement of funds, 79-1402
 - income and interest moneys to be used for payment of claims, 79-1403
 - receipts, monthly deposit required, 79-1401
- program planning and budgeting system to be implemented, 79-1012.2
 - biennial budget, contents, 79-1012.3—See state budget, below
 - definition of terms, 79-1012.1
 - long-range building programs, budget to contain detailed recommendations, 79-1012.4
 - scope of system, 79-1012.2
 - variance report for past fiscal year submitted by governor, 79-1012.5
- purchase orders and accrued expenses, encumbering and reappropriation of funds for, 59-701.1
- refunding bonds or debentures, nature of issuance, 79-1802
- refund of moneys paid into treasury through error, 79-415
- refunds by state, minimum amounts, 82-110
- retention of income and deposits by state agencies, 79-603
- salary schedules maintained by controller, 82-109.4

INDEX

References are to Title and Section numbers

PUBLIC FINANCE (Continued)

State finance (Continued)

state budget

appearance of state officials, agencies and institutions before legislature authorized, 79-1015.2

blanks for preparation of budget estimates

distribution, 79-1013

duty of department, institutions and agencies, 79-1013

budget amendments, approval by legislative finance committee required, 43-1118

review by fiscal analyst, 43-1119

budget director appointed by governor, duties, 79-1012

additional duties, 79-1017

inquiries and investigations by director, 79-1016

power to demand and receive information from departments, agencies and officers, 79-1018

budget message, 1972 Const., VI, 9; 79-1015

Capitol and Supreme Court and Law Library Building Act inapplicable, 78-1209

detailed budget estimate, 79-1015

director of budget, appointment, 79-1012

division and parts of budget submitted to legislature, 79-1015

expenditures during first year of biennium from appropriation for second year, 79-1019

fiscal analyst, employment, duties, 43-1113, 43-1114—See LEGISLATURE, Legislative Finance Act

governor constituted chief budget officer, 79-1012

inquiries and investigations by budget director, 79-1016

legislative action on budget, reference to committee, powers, 79-1015.1

legislative finance committee created, powers and duties, 43-1111, 43-1113—See LEGISLATURE, Legislative Finance Act

preliminary budget, preparation, 79-1014

program planning and budgeting system to be implemented, 79-1012.1 to 79-1012.5—See program planning and budgeting system to be implemented, above

proposed budget bill, 79-1015

submission of budget to legislature, 79-1015

submission of preliminary budget to governor and governor elect, 79-1014

unexpended balances to revert to fund from which appropriated, 79-1015.3

vehicle equipment safety commission budget, submission to director, 32-21-173

treasury fund structure

accounts within funds, creation and abolition by controller, 79-413

appropriations from several sources for operation of public agency, accounting for and disbursement of funds, 79-414 (4)

clearing and suspense accounts authorized, 79-412

disbursements from funds, appropriations, general laws or contracts authorizing, 79-415

enumeration and description of funds, 79-410

future laws or contracts requiring segregation of moneys, interpretation, 79-411

investment funds authorized under unified plan, 79-412

previous definitions of funds superseded, 79-411

purpose of act, 79-409

records of funds and accounts to be maintained, 79-414

segregation of funds into accounts, creation, consolidation or abolishment of accounts, 79-413

short title of act, 79-409

special funds abolished and transferred to general fund, 79-416

temporary loans from account to account, 79-414

general fund, loans to, 79-415

uncollectible accounts, writing off, 82-110

unexpended appropriations, disposition, 79-1015.3

unpaid obligations at end of fiscal year, encumbrances for, 59-701.2

purchase orders and accrued expenses, 59-701.1

INDEX

References are to Title and Section numbers

PUBLIC FINANCE (Continued)

State finance (Continued)

warrants

order in which drawn, 79-104

required for payment of moneys by treasurer, 79-202

PUBLIC HEALTH

Clean Air Act, 69-3904 to 69-3923—See **AIR POLLUTION CONTROL**

Consent by minors to medical or surgical care, 69-6101 to 69-6105—See **CHILDREN AND MINORS**

Definition of terms, 69-4102

Department of health and environmental sciences, 69-4101 to 69-4118, 82A-601 to 82A-620—See **DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES**

Emergency medical services, 69-7001, 69-7002—See **EMERGENCY MEDICAL SERVICES**

Hearing aid dispensers, 66-3001 to 66-3022—See **HEARING AID DISPENSERS**

Occupational disease prevention, 69-4206 to 69-4221 — See **OCCUPATIONAL HEALTH**

Penalty for violation of health laws or rules, 69-5701

Tuberculosis—See **TUBERCULOSIS**

Violation of health laws or rules as misdemeanor, 69-5701

PUBLIC LANDS

See **STATE LANDS**

PUBLIC MILLS

Montana trade commission abolished and functions transferred, 82A-405

PUBLIC OFFICERS AND EMPLOYEES

Bonds required of state officers and employees

amount of bond required, determination, 6-106

companies permitted to write bonds, 6-107

competitive bidding for bonds required, 6-106

controller to purchase bonds, 6-105

form of bonds, approval, 6-105

group bonds permitted, 6-105

judicial employees exempt from general provision, 6-105

legislative employees exempt from general provision, 6-105

premiums, proration and payment, 6-108

Candidacy for public office during term authorized, 1972 Const., VI, 5

Code of ethics for officers and employees, 1972 Const., XIII, 4

Collective bargaining for public employees, 59-1601 to 59-1616

Administrative Procedure Act applicable, 59-1616

agreements to be in writing, contents, validity, 59-1610

statutory procedure for making agreement exclusive, 59-1610 (3)

arbitration, award enforceable, 59-1614

certification of labor organization as exclusive representative of public employees, procedure, 59-1606

board considerations, 59-1606 (2)

certification, 59-1606 (3)

election, 59-1606 (1) (3)

petition filed with board, 59-1606 (1)

check-off of dues upon written authorization of public employee, 59-1612

religious conviction against financial support of labor organizations, charitable contribution as alternative, procedure, 59-1603 (5)

collective bargaining through exclusive representative as right of public employees recognized, 59-1603

"bargain collectively" defined, 59-1605 (3)

bargaining collectively in good faith as duty of parties, 59-1604

"exclusive representative" defined, 59-1602 (6)

prerogatives of public employers to be recognized, 59-1603 (2)

INDEX

References are to Title and Section numbers

PUBLIC OFFICERS AND EMPLOYEES (Continued)

- Collective bargaining for public employees (Continued)
 - collective bargaining through exclusive representation (Continued)
 - refusal to bargain collectively in good faith as unfair labor practice, 59-1605
 - representative of public employer, 59-1609
 - counsel for public parties to litigation, 59-1611
 - definition of terms, 59-1602
 - existing collective bargaining agreements not affected, 59-1615
 - fact-finding proceedings upon petition of either negotiating party, procedure, 59-1614
 - legislative authority not limited by act, 59-1605 (4)
 - legislative policy, 59-1601
 - mediation of dispute concerning collective bargaining agreement to be requested by negotiating parties, 59-1614
 - fact-finder as mediator, 59-1614 (8)
 - oaths and affirmations administered by board, 59-1613
 - professional education employees of board of regents, student government participation in bargaining with, 59-1602 (1)
 - religious conviction of public employee as basis for right not to join or financially support labor organizations, contribution to charity as alternative, procedure, 59-1603 (5)
 - right to join or form labor organization recognized, 59-1603
 - "labor organization" defined, 59-1602
 - labor organization responsibilities generally, 59-1603 (3)
 - requisites for certification of labor organization, 59-1603 (4)
 - rules and regulations of board, 59-1613 (4)
 - school districts, matters subject to bargaining, 59-1617
 - subpoena powers of board, 59-1613
 - unfair labor practices of public employer or labor organization, 59-1605
 - enforcement of board order in district court, 59-1608
 - remedies, hearing, procedure, 59-1607
- Decision making process, public right of participation in, 1972 Const., II, 8
- Deferred compensation plan, 68-2701 to 68-2709—See DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES
- Duties of executive officers, 1972 Const., VI, 4
- Election of executive officers, 1972 Const., VI, 2
- Facsimile signatures of public officials
 - "authorized officer" defined, 59-1301
 - definitions, 59-1301
 - effect of facsimile signature, 59-1302
 - facsimile seal, use, 59-1303
 - "facsimile signature" defined, 59-1301
 - "instrument of payment" defined, 59-1301
 - "public security" defined, 59-1301
 - requirement before facsimile signature may be used, 59-1302
 - short title of act, 59-1306
 - uniformity of interpretation, 59-1305
 - use of facsimile signature in lieu of manual signature, 59-1302
 - violations of act with intent to defraud, felony, 59-1304
- Gambling offenders, receiving money for protection of, felony, 94-8-417
- Group insurance for state employees, 59-1501 to 59-1507
 - approval of insurance by component group required, 59-1505
 - combining existing employee groups, 59-1504
 - component group negotiating insurance and health service corporation plan, 59-1505
 - costs of administration and negotiation, approval and payment, 59-1507
 - definition of terms, 59-1501
 - "employee" defined, 59-1501
 - employer contribution upon approval of insurance or plan, 59-1505
 - executive and legislative branches, combining employees of, 59-1504
 - negotiation and contracting for insurance and health service corporation plans by department of administration, 59-1502
 - advisory council to be created, composition, functions, meetings, 59-1503
 - rules of department, 59-1506

INDEX

References are to Title and Section numbers

PUBLIC OFFICERS AND EMPLOYEES (Continued)

- Highway department employee grievances, hearing, 32-2505
- Holiday on employee's day off, compensatory time, 59-1009
- Hours of work of salaried employees, 59-510
- Impeachment, 1972 Const., V, 13; 95-2801, 95-2802—See IMPEACHMENT OF PUBLIC OFFICERS
- Jury duty, leave without pay, 59-1010
 - excused upon request of employer, 59-1010 (3)
 - state officers exempt, 93-1304
- Leave of absence for employees holding public office, return requirements, 59-1011
 - unemployment benefit cost not charged to employer, 59-1012
- Merit system council, existence and composition, appointment, terms and compensation of members, 82A-206—See REORGANIZATION OF STATE GOVERNMENT, Department of administration
- Mileage allowance for travel in own vehicles, 59-801
- Misconduct in office, 94-7-401—See CRIMINAL OFFENSES, Official misconduct of public servant
- Oath of office, 1972 Const., III, 3
- Other governmental employment prohibited during term of executive officers, 1972 Const., VI, 5
- Per diem allowances while in travel status, 59-538, 59-539
- Personnel classification plan to be developed by department, 59-905
 - adjustment of classifications, appeal, 59-907
 - negotiable in collective bargaining proceedings, 59-907
 - classes of employees in each agency determined by department, 59-909
 - amendment of determination, 59-909 (1)
 - increase in class of positions, authority of budget director required, 59-911
 - legislative amendment, 59-909 (3)
 - continuous review of positions by department, 59-907
 - definition of terms, 59-903
 - exemption of certain officers and employees, 59-904
 - functions and duties of department, delegation authorized, 59-913
 - guidelines for classification, 59-906
 - increase in salary or wage of class of employees, budget director authority required, 59-910
 - legislative authority not limited by act, 59-912
 - list of positions to be maintained by state agencies, contents, 59-908
 - merit systems established in certain agencies continued, 59-914
 - number of employees in each agency to be determined by budget director, 59-909 (2)
 - amendment of determination, 59-909 (2), (3)
 - increase in number, authority of budget director required, 59-911
 - policies to be established by department, notice, hearing, 59-913
- Privately owned vehicle used in state business, restrictions on reimbursement, 53-517
- Public employees' retirement act—See PUBLIC EMPLOYEES' RETIREMENT ACT
- Qualifications of executive officers, 1972 Const., VI, 3
- Removal from public office as provided by law, 1972 Const., V, 13
- Residence of executive officers at seat of government, 1972 Const., VI, 1
- Salaries—See SALARIES
- Salary commission created, 59-1401 to 59-1404—See MONTANA SALARY COMMISSION
- Salary schedules maintained by department, purpose, 82-109.4
- Separation of powers, 1972 Const., III, 1
- Sick leave, allowance, accrual and administration, 59-1008
 - definition of terms, 59-1007.1
- Social security coverage authorized, 59-1103
 - contribution account, sources, administration and use, 59-1105
 - contributions fund, investment, 59-1105
 - payment for, 59-1103
 - plans for coverage of employees of political subdivisions, 59-1104
 - school support funds liable for district's share of contributions, 59-1110

INDEX

References are to Title and Section numbers

PUBLIC OFFICERS AND EMPLOYEES (Continued)

- Successor, substitution as party in pending action, M. R. Civ. P., Rule 25(d)
- Terms of executive officers, 1972 Const., VI, 1
 - elected or appointed officers in office on effective date of new constitution, 1972 Const., Transition Schedule, sec. 6
- Tort actions against officer or employee for conduct within scope of employment, joinder of governmental employer required, 82-4323
 - indemnity to employee against money judgments or legal expenses, 82-4323 (3)
 - legislative purpose, 82-4322.1
 - recovery against governmental entity as bar to action or recovery against employee, 82-4323 (2)
- Travel expense, 59-538, 59-539
 - mileage allowance, 59-801
- Vacancy in executive office, how filled, 1972 Const., VI, 6
 - assumption of office by appointee of governor prior to legislative confirmation, 59-605 (2)
 - inability to discharge powers and duties of office, legislative declaration of vacancy, procedure, 59-609
- Vacations, definition of terms, 59-1007.1
- Witness, employee serving as, compensation, 59-1010

PUBLIC PARTICIPATION IN GOVERNMENTAL PROCESSES

- See also OPEN MEETINGS
- Examination of government documents or observation of deliberation of public bodies, exception, Const., II, 9
 - costs and attorneys' fees in successful action to enforce right recoverable, 93-8632
- Legislative sessions and meetings open to public, Const., V, 10
- Participation by people in decision making process of state and local government, Const., II, 8

PUBLIC PROPERTY

- Coal leases, county property, term, 16-1030
- Lease of county property, 16-1030
- Taxation of property subject to contract of sale or option to purchase, 84-204, valuation and assessment of property, 84-205

PUBLIC RECORDS

- Destruction of old county and school district records, 59-514
 - fiscal records, destruction after period of years, 59-516
- Falsification in official matters as criminal offense, 94-7-201 to 94-7-210—See CRIMINAL OFFENSES, Falsification in official matters
- Financial documents, destruction authorized after 25 years, 59-516
- Financing statements under Uniform Commercial Code, period for which retained, 59-516.1
- Probate proceedings, records required to be kept, 29A-1-305
- Tampering with records or information as criminal offense, punishment, 94-7-209—See CRIMINAL OFFENSES, Tampering

PUBLIC SERVICE COMMISSION

- Consumer counsel, notice to of commission hearings, 8-901, 70-710, 72-170
 - availability of counsel, notice to advise public, 8-902, 70-711, 72-171
 - injunction or restraining order in adjudicatory proceedings, motion for, 93-4215 (2)
- Continuation of commission and functions, 82A-1702
- Department of public service regulation created under commission, 82A-1701
- Districts of commission, distribution, 70-101.1
- Licensing of VHF booster or VHF translator systems for television—See TELEVISION
- Members of commission, election and term of office, 70-101
 - election from separate districts, 70-101
 - vacancy filled by appointment by governor, 70-101
- Motor carriers, regulatory powers of commission, 8-103
- Name changes, 82A-1704 to 82A-1706

INDEX

References are to Title and Section numbers

PUBLIC SERVICE COMMISSION (Continued)

- Railroads, regulation by commission—See RAILROADS, Public service commission
- Salaries of commissioners, 25-501
- Travel expense of commissioners, reimbursement, 72-107
- Underground power lines when feasible in new service areas, implementation by commission, 70-304

PUBLIC UTILITIES

- Consumer counsel to represent consumer interests before public service commission, funding by special tax, 1972 Const., XIII, 2; 70-701 to 70-711
 - appointment of counsel, qualifications, compensation, 70-705
 - definition of terms, 70-702
 - fees, deposit and disposition, 70-709
 - evasion of gross operating revenue fee, civil and criminal penalty, 70-709
 - gross operating revenue fee of regulated companies, 70-709
 - legislative consumer committee created, composition, terms of members, election of officers, 70-703
 - meetings of committee, 70-704
 - per diem and expenses of members, 70-704
 - personnel, employment by counsel, 70-706
 - powers and duties, 70-707
 - public service commission hearings, notice served on counsel, 8-901, 70-710, 72-710
 - availability of counsel contained in notice of commission hearings, 8-902, 70-711, 72-171
 - reports to committee, 70-707
 - subpoenas, issuance by district court, 70-708
 - title of law, 70-701
- Criminal mischief causing interruption or impairment of services, punishment, 94-6-102 (2)
- Energy conservation, financing of customer investment in alternative sources of energy generation authorized, 84-7405—See ENERGY CONSERVATION, Tax incentives
- Financing statements of utility, contents and place of filing, 87A-9-302.2
 - definition of terms, 87A-9-302.1
 - Uniform Commercial Code, application, 87A-9-302.3
- Highways, location of facilities along, 32-2414
 - costs paid by highway commission, 32-2415
 - definition of terms, 32-2416
- Injunction or restraining order in adjudicatory proceedings or formal investigations, 93-4215 (2)
- Overhead utility lines, relocation for purpose of installing agricultural improvement, 24-201 to 24-204
 - "agricultural improvement" defined, 24-201
 - costs of relocation, how paid, 24-204
 - definition of terms, 24-201
 - hearing and order, 24-203
 - "overhead utility line" defined, 24-201
 - petition of landowner for relocation, contents, 24-202
- Rates and charges
 - advertising costs not deductible from income, exceptions, 70-121.1
 - contributions, donations or gifts not deductible from income, exceptions, 70-121.1
 - disallowed expense to be itemized by commission, 70-136
 - property values not to exceed original cost, 70-106
 - schedules, procedures for change, 70-113
 - travel expense, verification and approval by chairman, 70-134
- Securities, issuance
 - exemption from Securities Act, 15-2013
 - order of commission authorizing issuance, 70-117.2
 - petition for issuance, contents and filing, 70-117.2
 - purposes for which issuable, 70-117.1
 - short term obligations issuable without commission approval, 70-117.3

INDEX

References are to Title and Section numbers

PUBLIC UTILITIES (Continued)

Securities, issuance (Continued)

- state not obligated by authorization of issue, 70-117.6
- subject to regulation and supervision by public service commission, 70-117.1
- time allowed for disposition of applications, 70-117.4
- unapproved securities void, 70-117.5

Sites for facilities, 70-801 to 70-823

- certificate required for construction of facility, 70-804
 - additional requirements by other agencies prohibited following issuance of certificate, exceptions, 70-817
 - amendment of certificate, form and contents, 70-806 (6)
 - application, form, contents, time of filing, 70-806 (1)
 - documents to accompany application, 70-806 (1) (3)
 - fee for filing application, purpose, 70-806 (2)
 - findings and opinions of board, requirements, 70-810, 70-811—See hearing, below
 - minimal adverse effects on environment and citizens of state as purpose, 70-802
 - notice of application, requirements for service of, 70-806
 - time of filing, waiver by board, 70-806 (7)
 - voiding of application, grounds, 70-818 (2)
 - waiver of application where relocation of facility, requirements, 70-806 (8)

definition of terms, 70-803

- federally controlled facilities exempt, 70-804
- financing of departmental activities, 70-805
- grants, gifts and funds, receipt by department authorized, 70-822
- hearing on certification proceedings, 70-807 to 70-813
 - amendment of certificate, hearing on application, 70-807 (2)
 - burden of proof, 70-809 (2)
 - findings, opinion and decision of board, 70-810, 70-811
 - hearing examiner, qualifications, 70-809 (3)
 - judicial review, 70-812, 70-813
 - parties to proceedings, waiver, 70-808
 - record of hearing required, 70-809
 - rules of evidence, 70-809
 - studies, investigations and reports as evidence, 70-809

long-range plan to be submitted to department annually by each utility, 70-814

- contents of plan, 70-814
- study and evaluation by department, factors considered, 70-815, 70-816

other laws superseded, 70-823

policy and legislative findings, 70-802

revenues, deposit and use, 70-824

revocation or suspension of certificate, grounds, 70-818

rules, adoption by board authorized; 70-820

study, evaluation and report of department on proposed facility, 70-807

suspension of facility siting pending legislative consideration of long-term, comprehensive state energy policy, 70-827

definition of terms, 70-826

legislative findings and policy, 70-825

positive action permitted for certain facilities, 70-829

suspension of pending application for certificate, when permitted, 70-828

title of law, 70-801

transfer of certificate, approval of department, restrictions, 70-804

underground investigation for development of underground facility, requirements, 70-820

"utility facility" defined, 70-803

violations, 70-819 to 70-821

civil actions, rights of private persons, 70-819

monitoring of facilities, 70-820

penalties, procedure for collection, 70-821

voiding of application for certificate, grounds, 70-818 (2)

Special privileges, franchises or immunities prohibited, 1972 Const., II, 31

Territorial integrity of electric suppliers, 70-501 to 70-508—See ELECTRIC SUPPLIERS, Territorial integrity

INDEX

References are to Title and Section numbers

PUBLIC UTILITIES (Continued)

Tramway not a public utility, 69-6615

Unclaimed deposits and refunds, when presumed abandoned, 67-2204—See **PROPERTY, Unclaimed property**

Underground conversion of facilities

- assessment of costs against benefited property, 70-605
- actions contesting validity of assessments, 70-625
- adoption of assessment ordinance, 70-618
- costs covered by assessment, 70-605
- governmental properties exempt from assessment, 70-605
- hearing on proposed assessments, 70-617
- installment payment of assessments specified by ordinance, 70-620
 - advance payment of installments, 70-623
 - delinquent installments, interest and penalties, 70-621
- irregularities in procedure, effect on validity, 70-625
- lien of assessments, 70-622
- limitation of actions to contest validity of assessment, 70-625
- notice of hearing on proposed assessments, 70-616
- payment of assessment, when due, 70-619
- proposed assessment list and ordinance, preparation, 70-614, 70-615

bonds, issuance and terms, 70-624

- actions contesting legality of bonds, 70-625

citation of act, 70-601

construction by utility of converted facilities, 70-627

- commencement of construction not required until legal steps taken, 70-635
- notice to landowners of completion and availability of services, 70-628
- reinstallation of overhead facilities prohibited, 70-632

costs of underground conversion

- computation of costs payable to utilities, 70-626
- feasibility report and cost estimate by public utility, 70-607
 - resolution requesting report, 70-606
- payment of public utility for costs, 70-631
 - unconstitutionality of payment provisions, effect, 70-634
- verified statement by utility after completion of conversion, 70-628

definition of terms, 70-603

legislative findings, 70-602

limitation of actions to contest validity of proceedings, 70-625

maintenance and repair of converted facilities, 70-627

private property, conversion of facilities on, 70-629

- cost statement furnished by utility, 70-629
- default by landowner, conversion by utility, 70-630
- notice to landowner to remove overhead facility, 70-628
- reinstallation of overhead facilities prohibited, 70-632

protest against proposed conversion, filing, 70-611

- abandonment of project required by protest, 70-612
- actions to contest validity of project, 70-625
- waiver of objections by failure to protest, 70-613

public service commission jurisdiction unimpaired, 70-633

purpose of act, 70-602

severability of provisions, 70-634

special improvement district, creation authorized, 70-604

- abandonment of district after hearing, 70-612
- area included in district, 70-604
- hearing on creation of district, 70-612
- notice of resolution and hearing, contents, 70-609
 - publication of notice, 70-610
- ordinance creating district, 70-612
- protest against creation of district, filing, 70-611
 - abandonment of project required by protests, 70-612
 - waiver of objections by failure to protest, 70-613
- resolution for cost and feasibility study, 70-606
- resolution of intention to create district, 70-608

title to converted facilities, 70-627

INDEX

References are to Title and Section numbers

PUBLIC UTILITIES (Continued)

- Underground facilities protected from excavations, 32-4801 to 32-4808—See **STREETS**,
Underground facility
- Underground power lines when feasible in new service areas, 70-304

PUBLIC WELFARE

- Aged persons or disabled adults, protective services for, 71-1914 to 71-1919—See **SOCIAL SERVICES**, Aged persons or disabled adults
- Aging, related functions of state department—See **AGED PERSONS**
- Aid to dependent children
 - amounts received by recipients as enrolled member of Indian tribe, effect, 71-509
 - changes in amount of assistance, 71-509
 - county residence, criteria for determination, 71-504
 - guardianship, creating, when, 71-509
 - unemployed father, when not disqualified, 71-501
 - federal funding, effect on qualification, 71-508.1
- Chronic renal disease, treatment for persons unable to pay, 71-2501, 71-2502
- Civil actions, poor person may sue or defend without costs, 93-8625
- Claims of board against estate of deceased recipient, 71-247
- Constitutional requirement for provision of economic assistance and social and rehabilitative services, 1972 Const., XII, 3
- County board of public welfare
 - audit by state department, 71-218
 - reimbursement for staff personnel expenses, 71-217
 - staff personnel, appointment and dismissal, 71-217
 - supervision by state department, 71-218
- County poor fund tax levy, budgeting and use, 71-222
- Day care facilities, licensing and regulation, 10-801 to 10-811—See **DAY CARE FACILITIES**
- Department of revenue authorized to investigate receipt and disbursement of welfare funds, 71-233.1
 - civil or criminal actions authorized, 71-233.1
 - confidentiality of information obtained, 71-233.4
 - co-operation of governmental agencies required, 71-233.2
 - information in welfare files to be made available to department, 71-233.3
 - "public welfare" and "welfare" defined, 71-233.5
- Dependent child aid, students eligible for, 71-501
- Developmentally disabled persons, protective services for, 71-1901 to 71-1913
 - application for protective services, contents, 71-1903
 - appropriated funds as source of payment for services, 71-1909
 - community homes for training and treatment authorized, 71-2001 to 71-2007
 - "community home" defined, 71-2002
 - departmental contracts with nonprofit corporations or associations authorized, 71-2004
 - establishment of homes by department, 71-2003
 - federal aid or other assistance, department authorized to apply for and receive, 71-2006
 - governmental units providing funds, materials, facilities and services, 71-2004
 - licensing of homes, rules and regulations to be adopted, 71-2007
 - limitation upon number of residents, 71-2002
 - local control of homes, 71-2005
 - nonprofit corporations or associations authorized to establish home, 71-2003
 - programs by nonprofit corporations or associations authorized, 71-2005
 - purpose of law, 71-2001
 - rules and standards to be adopted by department, 71-2005
 - definition of terms, 71-1901
 - department as guardian or trustee, 71-1903
 - bond not required of department, exception, 71-1908
 - conservator of estate of ward, 71-1906
 - continuation or termination, hearing, 71-1911
 - disabilities, imposition upon ward authorized, 71-1904 (4)
 - manner of providing protective services, 71-1907

INDEX

References are to Title and Section numbers

PUBLIC WELFARE (Continued)

Developmentally disabled persons (Continued)

- department as guardian or trustee (Continued)
 - petition in district court, contents, hearing, order, 71-1904
 - protective and supportive services provided by department, 71-1905
- "developmentally disabled person" defined, 71-1901
- eligibility, determination and notice by department, 71-1903
- estate of ward, payment for services by, limitations, procedure, 71-1909
- gifts, grants and legacies, acceptance by department, 71-1913
- judicial records required, 71-1912
- legislative findings and declaration of policy, 71-1902
- persons who may apply for protective services, 71-1903
- reports required of field staff and director, 71-1910
- rules and regulations to be adopted by director, 71-1902
- sources of funds for payment for protective services, 71-1909
- state-wide system of protective service to be developed, scope, 71-1902

Economic opportunity and poverty relief

- city-county commissions, creation authorized, 71-1604
- federal agencies, agreements with authorized, 71-1602
- public funds, expenditure authorized, 71-1603
- purpose of act, 71-1601

Funds available for welfare, receipt and crediting, 71-901

General relief

- institutionalized ward or patient as recipient, county of financial responsibility, 71-302.2
- interstate transients, temporary relief, 71-302.2
- medical assistance
 - "medically needy," authority of department to define, 71-308 (4)
 - rules promulgated by department to determine persons in need of medical assistance, 71-308 (4)
 - subrogation of state or county to claims of physician or hospital, 71-308 (5)
- payment of relief, means used, 71-307
- residency requirements, 71-302.2
- work required of persons on relief, 71-307
- workmen's compensation coverage, 92-411

Liens against property and estate of recipient released, 71-246.1

Medical assistance

- administration and supervision by state and county departments, 71-1511
- amount, scope and duration of assistance, 71-1517
- application for assistance to county department, form, 71-1518
- contracting with other agencies to process claims and provide services, 71-1515
- discrimination prohibited, 71-1526
- eligibility for aid, 71-1516
 - determination of eligibility by county department, 71-1520
 - federal determination of eligibility, acceptance authorized, 71-1520
 - redetermination of eligibility, 71-1521
- freedom of medical practice and selection of doctor, 71-1514
- investigation of applications by county department, 71-1520
 - county investigation not authorized upon federal determination of eligibility, 71-1520
- lien on property not to be required of recipient, 71-1524
- recovery of payments from estate of deceased recipient, 71-1524
- relative's responsibility, 71-1525
- services included, 71-1512
- state institution inmates, sources of payments for, 71-1517

Persons receiving benefits under public welfare not entitled to compensation under occupational disease act, 92-1332

Poverty relief, 71-1601 to 71-1604—See Economic opportunity and poverty relief, above **Public assistance personnel, merit system and staff policies maintained by state department, 71-210.1**

Retarded child unable to benefit from special education program, report to and aid by local welfare department, 75-7812

INDEX

References are to Title and Section numbers

PUBLIC WELFARE (Continued)

Silicosis payments

- division of workers' compensation to administer chapter, duties, 71-1002
- payments to continue to surviving spouse of recipient of silicosis payments, 71-1010
 - prior death of spouse, eligibility for payments, 71-1010.1
- state institution inmate, benefits payable to beneficiary, 71-1003
- transfer of records and payrolls to industrial accident board, 71-1009

State department of social and rehabilitation services created, 82A-1901

- agent of federal government, department to act as, 71-211
- attorney general legal advisor, 71-207
 - additional counsel, employment and compensation, 71-207
- authority and activities, 71-210
- board of social and rehabilitation appeals created, 82A-1906
- board of veterans' affairs, composition and functions, 82A-1905
- definition of "state department" as used in Title 71, 71-201.1
- head of department, 82A-1901
- public assistance personnel, department responsibilities, 71-210.1
- supplementary payments, department may provide and set standards, 71-210.2, 71-210.3

State hospital, maintenance of indigent persons discharged from, 38-110

State institution inmates, counties not required to reimburse for aid to, 71-211

Supplementary payments from state funds, department may provide, 71-210.2

- rules concerning supplementary payments, department may make, 71-210.3

Veteran's welfare, 71-2201 to 71-2207—See VETERANS, Board of veteran's affairs

Vocational rehabilitation and education, 71-2101 to 71-2108—See LABOR, Vocational rehabilitation

PUBLIC WORKS

Direct charge and supervision of professional engineer or land surveyor required, 66-2363

PULMONARY DISEASE HOSPITAL

See GALEN STATE HOSPITAL, 80-1701 to 80-1704

PURCHASES BY STATE

See STATE PURCHASES

Q

QUARANTINE

State quarantine in case of communicable disease, 69-4112

Venereal disease cases, isolation, 69-4605

QUIETING TITLE

Summons in action, statement to be added, M. R. Civ. P., Rule 4 C(2)

QUO WARRANTO

Audit of public entities, writ available to official, 82-4526 (3)

Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

R

RACIAL DISCRIMINATION

Constitutional prohibition, 1972 Const., II, 4

- discriminatory practices, 64-304 to 64-312—See CIVIL RIGHTS, Discriminatory practices

freedom from discrimination as civil right, 64-301

RACING ASSOCIATIONS

Horse racing, 62-501 to 62-514—See HORSE RACING

INDEX

References are to Title and Section numbers

RADAR

Radar arrest cases, 32-2150.1 to 32-2150.3

RADIATION CONTROL

Control agency, powers and duties, 69-5804

Co-operative agreements with federal government and other agencies, 69-5810

Definition of terms, 69-5803

Emergency actions by board, 69-5812

Exemptions from statutory regulation, 69-5815

Exposure records required for persons exposed to radiation, 69-5808

Federal responsibility for radiation sources, assumption by state, 69-5809

Hearings required in regulatory proceedings, 69-5812

Impounding of radiation sources possessed by unauthorized persons, 69-5814

Inspections to determine compliance with act and rules, 69-5807

agreements with other agencies for co-operative inspections, 69-5810

Licensing of persons handling radioactive materials and equipment, 69-5806

Local regulations not superseded by act, 69-5811

Medical use of radiation not restricted, 69-5808

Penalty for violations, 69-5816

Policy of state, 69-5801

Procedural requirements for regulatory acts, 69-5812

Prohibited uses of radiation sources, 69-5813

Purpose of regulation, 69-5802

Records required of persons possessing sources of ionizing radiation, 69-5808

Registration of persons handling radioactive materials and equipment, 69-5806

Training programs to qualify personnel, 69-5810

RADIO

Criminal mischief causing interruption or impairment of public communication, punishment, 94-6-102 (2)

Defamatory statements, notice to broadcaster and opportunity to correct, 64-207.1

Educational broadcasting, 75-9001 to 75-9004—See **EDUCATIONAL RADIO AND TELEVISION**

Freedom of speech, expression, and the press, 1972 Const., II, 7

Protection of sources of information, 93-701-4

Publication of notice supplemented by broadcast, 19-201

copy of transcript to be retained by broadcasting station, 19-202

proof of publication, 19-203

RADIOLOGIC TECHNOLOGISTS

Board created, composition, appointment, qualifications and terms of members, 82A-1602.28

compensation and expenses of members, 66-3703 (1)

meetings of board, frequency, 66-3703 (2)

quorum at meetings, 66-3703 (3)

rules, promulgation by board authorized, 66-3704

Criminal offenders, licensing of, 66-4001 to 66-4005—See **LICENSURE OF CRIMINAL OFFENDERS**

Definition of terms, 66-3701

Fees deposited in earmarked revenue fund for use of board, 66-3707 (1)

Inspections for compliance with provisions, 66-3711

License required for radiologic technologist, 66-3702 (1)

examination of applicants required, scope, 66-3706

examination fee, amount, not refundable, 66-3706 (3)

failure of applicant to pass, re-examination, fee, 66-3706 (3)

frequency of examinations, 66-3706 (2)

license without examination, 66-3706, 66-3708

expiration of license, renewal, fee, 66-3709

issuance of license, fee, 66-3707 (1), 66-3708

persons exempt from licensing requirements, 66-3702 (2), (3)

qualifications required of applicants for license, 66-3705

"radiologic technologist" defined, 66-3701 (6)

revocation or suspension of license, grounds, hearing, 66-3710

Violations, penalty, 66-3712

INDEX

References are to Title and Section numbers

RAFFLES

See GAMBLING, Bingo and raffles

RAILROADS

- Accidents, investigation by public service commission, 72-120
 - railroad company to report accidents to public service commission, 72-121
- Accommodations for transportation, commission power to compel, 72-123
- Action by railroad to determine reasonableness of rule of commission, 72-163
- Annual reports from railroads to be made to public service commission, 72-137
- Annual report to summarize safety measures, 72-143
- Application of act, 72-101.1
- "Board" defined, 72-101.1
- Bonds of railroad companies, issuance and terms, 72-224
- Borrowing power of railroad companies, 72-211
- Bulk shipments, commission to enforce law concerning cars, 72-662
- "Commission" defined, 72-101.1
- Crossing of railroad by other railroad, facilities for transfer of people and freight may be ordered by commission, 72-156
- Crossings in unincorporated towns, public service commission may enforce or modify county commissioner's order for construction, 72-705
 - reasonableness of county commissioner's order for construction, commission may conduct hearing to determine, 72-706
- Definition of terms, 72-101.1
- District court proceedings, jurisdiction to enforce commission rules, 72-153
- Electric signaling devices, commission may require, 72-164
 - hearing on petition for installation, 72-165
 - order of commission, 72-165
 - petition for installation, presentation of petition by board of county commissioners, 72-165
- Equipment trusts excluded from Uniform Commercial Code, 87A-9-104
- Financing statements of railroad, contents and place of filing, 87A-9-302.2
 - definition of terms, 87A-9-302.1
 - Uniform Commercial Code, application, 87A-9-302.3
- Flood control projects, contracts for use of railroad property for, 89-3310
- Freight and baggage rooms, commission power to compel provision, 72-123
- Intrastate shipments, liability of carrier for full loss, limitation of liability void, exceptions, 8-812.1
 - delay in disposition of claim, allowance of attorney fees, 8-812.1
 - liability between carriers, 8-812.2
- Livestock, killing or injuring, claim made by department of livestock, 72-407
- Loading platforms, commission may require enlargement, 72-147
- Public service commission, power to fix rates, schedules and classifications, 72-116
 - acceptance of favors from railroads prohibited, 72-136
 - action by railroad to determine reasonableness of commission rule or order, 72-132, 72-133
 - costs of action, 72-155
 - order effective until final decision, 72-155
 - annual report of commission to detail enforcement efforts, 72-143
 - attorney general as attorney for commission, 72-124, 72-128
 - car companies, supervision, 72-119
 - chairman, selection by members, 72-105
 - charges by railroad different than rate fixed by commission prohibited, penalty for violation, 72-126, 72-127
 - common carrier supervision, 72-119
 - crossing of railroad by other railroad, facilities for transfer of people and freight may be ordered by commission, 72-156
 - employee safety laws, commission to monitor railroad observance, 72-142
 - employees, selection by commission, 72-105
 - enforcement in district court of regulation of commission, 72-160
 - appeal to supreme court, 72-161
 - enforcement of orders in district court, appeal, 72-128
 - express companies, supervision, 72-119

INDEX

References are to Title and Section numbers

RAILROADS (Continued)

Public service commission (Continued)

- freight and freight-line companies, supervision, 72-119
- grain cars, duty to enforce act concerning, 72-662
- hearings, 72-103
- inspection of records, authority of commission, 72-119
- interstate commerce law, commission to make complaint upon violation, 72-116
- investigations, 72-103
- joint rates, determinations of commission, 72-158
- notice of hearings to be served upon consumer counsel, 72-170
 - availability of consumer counsel, notice to advised public, 72-171
- officers of commission, 72-105
- penalties and forfeitures, collection by commission, 72-135
 - shipper's action upon commission failure to recover, 72-135
- process, issuance, 72-113
- railroads, supervision, 72-119
- reports of railroads to be made annually to commission, 72-137
- review of commission action, commencement, 72-125
 - notice, 72-125
- rules, adoption, 72-103
- secretary of commission, appointment and qualifications, 72-105
 - duties, 72-112
 - term of office, 72-105
- service and accommodations, commission power to compel, 72-123
- sleeping-car companies, supervision, 72-119
- suits and proceedings by commission, attorney general to assist, 72-124
 - county attorneys' assistance, 72-124
 - precedence over other court business, 72-124, 72-139
 - violations to be reported by commission to attorney general for institution of enforcement proceedings, 72-139
- suspension of commissioner, 72-139
- traveling expenses of commissioners and employees, 72-107
- violations of law, prosecution by commission, 72-139
- witnesses, process to compel attendance, 72-113, 72-122
 - compensation, 72-122
 - immunity, 72-120
 - self-incrimination not grounds for refusal to testify, 72-122
- "Railroad" defined, 72-101.1, 72-115
- Rate changes by railroad or board action, 72-118
- Safety equipment on cars, trains and engines, inspection and rule-making powers of commission, 72-150
 - brake equipment, inspection and rule-making powers of commission, 72-151
- Sanitation and shelter for railroad employees, inspection and rule-making powers of commission, 72-150
- Securities, when exempt from securities act, 15-2013
- Service, power of commission to compel, 72-123
- Spur or side tracks, commission may compel construction, 72-152, 72-159
 - removal, when authorized, procedure, 72-159
- Station closure, protection of employees, 72-169
- Stockyards, pens and chutes, commission may compel construction, 72-159
 - removal, when authorized, procedure, 72-159
- Supreme court review of district court judgment, precedence over other business, 72-154
- Waiting rooms, commission may compel provision by railroads, 72-123

RAPE

See CRIMINAL OFFENSES, Sex offenses

REAL ESTATE BROKERS

- Action by broker for commission, licensing to be alleged and proved, 66-1941
- Board of real estate
 - administrative services provided by department, 82A-1603
 - allocation to department for administrative purposes, 82A-1602

INDEX

References are to Title and Section numbers

REAL ESTATE BROKERS (Continued)

Board of real estate (Continued)

- appointment, qualifications and terms of members, filling of vacancies, 82A-1602.23
- attorney general to act for board, 66-1944
- compensation of members, 66-1927
- continuation in office of board members, 82A-1606
- educational activities authorized, 66-1943
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.23
- fees charged and collected by department, deposit and use by board, 66-1934
- legal assistance in hearings by board, 82A-1604
- powers and duties, 66-1927
- record of board proceedings kept by department, 66-1927
- records and papers, certified copies as evidence, 66-1927 (4)
- retention of functions by board, 82A-1605
- rules, adoption by board, 66-1927
- seal, adoption by board, 66-1927 (4)
- travel expense of members, 66-1927 (3)

Bond required, contents and filing, 66-1933

Citation of act, 66-1924

Corporation or partnership as broker, requirements, 66-1924

Definition of terms, 66-1925

Directory of licensees, publication by department, 66-1945

Educational activities of board, 66-1943

Employment of salesman by broker, license provisions, 66-1935

Exemptions from act, 66-1926

Fees charged and collected by department for use of board, 66-1934

- annual fees, when payable, 66-1934
- deposit in treasury and apportionment of fees, 66-1927
- expenses of commission, payment from fund, 66-1927
- schedule of fees prepared by board, 66-1934

Fixed office required of broker, 66-1935

Fraudulent practices act, licensing law supplemental to, 66-1946

Liability for damages from failure to comply with act, 66-1940

Licensees

- annual fees, cancellation for failure to pay, 66-1934
- bond required for license, 66-1933
- commission of broker or salesman, proof of licensing required in action to collect, 66-1941
- corporations, licenses required, 66-1942
- display of license by broker required, 66-1932
- employment change by salesman, new license required, 66-1935
- examination of applicants for license, 66-1930
- fees payable for licenses, 66-1934
- form prescribed by board, 66-1932
- issuance of license, regulation by board, 66-1931
- nonresident brokers, reciprocal licensing and privileges, 66-1936
- penalty for acting without license, 66-1940
- pocket card, issuance by department, 66-1932
- previously licensed brokers and salesmen, licensing without examination, 66-1930
- qualification of licensees, 66-1929
- required for conduct of business, 66-1924
- revocation or suspension of license, 66-1931
 - grounds for revocation or suspension, 66-1937
 - hearing, notice, 66-1938.1
- salesman's license kept by broker, 66-1932

Nonresident brokers, licensing and conduct of business by, 66-1936

Partnership or corporation as broker, requirements, 66-1924 (3)

Penalties for violations of act, 66-1940

Place of business of broker to be designated in license, 66-1935

Salesmen, bond required, 66-1933

Service of process on nonresident brokers, 66-1936

Short title of act, 66-1924

INDEX

References are to Title and Section numbers

REALTY TRANSFER ACT

See TAXATION, Realty Transfer Act

RECALL

City officer under mayor-council form of government, 11-721.1

RECEIVERS

Appointment for consumer loan licensees, 47-227

Bulk Transfer chapter inapplicable to sales by receivers, 87A-6-103

Corporations, liquidation of

business corporations, 15-2291, 15-2292

nonprofit corporations, 15-2355, 15-2356

Real estate brokers' act, exemptions from, 66-1926

Statutes and rules governing receivers, M. R. Civ. P., Rule 66

Voting of corporate shares standing in name of receiver, 15-2231

RECIPROCAL ENFORCEMENT OF SUPPORT

See SUPPORT, Reciprocal enforcement, 93-2601-41 to 93-2601-82

RECOGNIZANCE

Preliminary examination of criminal defendant, recognizance by witness after examination, 95-1204

Release of person in custody on own recognizance, 95-1106

RECORDING

Abstracts entitled to recordation, 16-2902, 73-101.1

effect of recording, 73-201.1

After-acquired interests, recording as constructive notice of prior conveyance, 73-201

Certificates of discharged soldiers without charge, 16-2927

Method of recordation of certain instruments, when proper, 16-2903

Microfilm, 16-2903

Photostatic or other mechanical processes

admissibility into evidence, 16-2430

authorized in counties, 16-2428

enlargement, 16-2430

reproduction as public record, 16-2429

storage of copy, 16-2431

substitution of reproduction for original, 16-2429

RECORDS

Destruction of old and worthless records, 59-514, 59-515

city or town officer, 59-515

county records, 59-514 (1)

school officers, 59-514 (2)

Photostatic or mechanical processes in counties—See RECORDING

Tax records more than thirty years old, destruction, 84-4175.2

RECREATION

Constitutional provision for preservation and administration of recreational areas, 1972 Const., IX, 4

Elderly persons, local tax levy to promote activities of, 71-1701

Landowner's restricted liability to gratuitous licensee for recreation, 67-808

definition of recreational purposes, 67-809

Outdoor recreational resources, development, 62-401 to 62-403—See OUTDOOR RECREATIONAL RESOURCES

Planning and development of facilities, 82-3705.2

RECREATIONAL VEHICLES

Construction standards, compliance with required, 69-2122 to 69-2124—See MOBILE HOMES

Snowmobiles, 53-1012 to 53-1029—See MOTOR VEHICLES, Snowmobiles

INDEX

References are to Title and Section numbers

REFEREES

See MASTERS, M. R. Civ. P., Rule 53

REFERRAL SALES

See CHAIN DISTRIBUTOR SCHEMES

REFRIGERATED LOCKERS

See FOOD AND DRUGS, Food service establishments, 27-611 to 27-625

REFUSE DISPOSAL AREAS

Certain existing laws unaffected, 69-4010

Definition of terms, 69-4002

Disposal in unlicensed area prohibited, 69-4003

Highway protection laws unimpaired, 69-4010

Landowner's rights preserved, 69-4008

Legislative findings, 69-4001

License required for operation of disposal area, 69-4004

 application for license, 69-4004

 expiration and renewal of licenses, 69-4005

 fee for license, disposition, 69-4004

 inspection and approval by health officials, 69-4005

 public agencies exempt from license requirement, 69-4008

 revocation of or refusal to renew license, 69-4006

Penalty for violations, 69-4009

Policy of state, 69-4001

Publicly operated disposal areas, application of requirements to, 69-4008

Repeal of conflicting acts, 69-4010

Rules and regulations, publication and enforcement, 69-4007

Water supply protection laws unaffected, 69-4010

REFUSE DISPOSAL DISTRICTS

Board of directors, 69-6009, 69-6010

Boundary changes, 69-6011

County attorney as legal adviser to district, 69-6013

Creation of district, 69-6003 to 69-6006

Definitions, 69-6002

Fees and assessments, 69-6007

Installment payments for land and equipment, 69-6008

Joint districts, organization, 69-6012

Purpose, 69-6001

RELEASE

Affirmative defense, M. R. Civ. P., Rule 8(c)

RELIGION

Appropriation for religious purposes prohibited, 1972 Const., V, 11

Discrimination on account of religious ideas prohibited, 1972 Const., II, 4

 discriminatory practices unlawful, 64-304 to 64-312—See CIVIL RIGHTS, Discriminatory practices

 freedom from discrimination because of creed as civil right, 64-301

Establishment of religion, laws respecting prohibited, 1972 Const., II, 5

Free exercise of religion guaranteed, 1972 Const., II, 5

Property tax exemption, 1972 Const., VIII, 5

Schools

 aid to sectarian schools by state prohibited, exception, 1972 Const., X, 6

 appropriation for private educational purposes prohibited, 1972 Const., V, 11

 instruction in sectarian doctrine prohibited, 75-7521

 nondiscrimination in education, 1972 Const., X, 7

RELIGIOUS CORPORATION SOLE ACT

Annual report required, 15-2409

Application of act, 15-2402

INDEX

References are to Title and Section numbers

RELIGIOUS CORPORATION SOLE ACT (Continued)

- Articles of incorporation
 - amendment of articles, 15-2410
 - filing with secretary of state, 15-2404
 - form and contents, 15-2404
 - verification by incorporation, 15-2404
- Board of advisors or consultants, number, qualifications, powers, 15-2408
- Certificate of incorporation, issuance by secretary of state, effect of, 15-2405
- Creation of corporation sole, when lawful, 15-2403
- Incorporator, 15-2403
- Invalidity of part of act, effect of, 15-2413
- Powers of corporation sole, 15-2406
 - succession on death or resignation from office, 15-2407
- Repeal of prior acts, effect of, 15-2412
- Short title, 15-2401
- Succession, when effected, 15-2407
 - interim powers of board of advisors or consultants, 15-2408
- Unauthorized assumption of corporate powers, liability for debts and liabilities incurred, 15-2411

RELOCATION ASSISTANCE

- Advisory services to be provided by agency, functions, duties, 93-9932
- Appeal to district court from administrative determination, 93-9936
- Application of law, programs and projects covered, 93-9927, 93-9944
- Appraisal, negotiation and condemnation policies to be followed by agency, 93-9937
- Definition of terms, 93-9928
- Eminent domain, new value not created by law, 93-9943
 - new or additional powers not created, 93-9943 (3)
- Legislative purpose, 93-9927
- Payments neither income nor resources under public assistance or state tax laws, 93-9935
- Project costs to include relocation costs, 93-9934
- Relocation payments, 93-9929 to 93-9931
 - buildings and improvements removable by tenant, payment of tenant for, 93-9941
 - condemnation proceedings abandoned, reimbursement of owner's expense, 93-9939, 93-9940
 - definition of terms, 93-9928
 - duplication of eminent domain payments not intended, 93-9942
 - moving expense, alternative plans, 93-9929
 - occupants of dwellings, payments to, 93-9929, 93-9931
 - owners of dwellings, payments to, 93-9929, 93-9930
 - penalty costs for prepayment of mortgage or deed of trust, reimbursement for, 93-9938
 - place of business or farm operation, payment based on average annual net earnings, 93-9929
 - real property taxes, reimbursement for pro rata portion, 93-9938
 - recording fees, transfer taxes and similar expense, reimbursement and owner for, 93-9938
- Replacement dwellings, assurance of availability required, 93-9933, 93-9934
 - new rights or liabilities not created, 93-9943

RENDERING OR DISPOSAL PLANTS

- Carcass of dead or fallen animal obtained by commission of felony, renderer and vehicle taken into custody, 46-2411
- Powers of department of livestock
 - licensing of rendering or disposal plants, fee, 46-2401
 - restraining operation of plant, procedure, appeal, 46-2403
 - revocation of license of plant, notice, hearing, appeal, 46-2404
 - rules, adoption and enforcement, 46-2402
 - witnesses, subpoena power, administration of oaths, 46-2405
- Rules or orders of department authorized, 46-2402

INDEX

References are to Title and Section numbers

REORGANIZATION OF STATE GOVERNMENT

- Advisory councils, creation, organization and functions, 82A-110
 - compensation and travel expenses of members, 82A-110 (5)
- Allocation of agency to department for administrative purposes only, 82A-108
- Appointment of department heads, 1972 Const., VI, 8; 82A-106
- Board of state canvassers transferred to office of secretary of state, 82A-2102
- Bondholders' rights protected, 82A-120
- Citation of act, 82A-101
- Constitutional authority, 1889 Const., VII, 21; 1972 Const., VI, 7
- Constitutional offices preserved, 82A-104
- Creation of new agencies prohibited, 82A-111
- Definition of terms, 82A-103
- Department of administration created, 82A-201
 - board of administration, existence and composition, appointment, qualifications, terms, and compensation of members, 82A-210
 - allocated to department for administrative purposes, 82A-210 (4)
 - board of examiners, existence, allocation to department for administrative purposes, exception, 82A-207
 - board of investments, existence and composition, appointment and qualifications of members, 82A-204
 - allocated to department for administrative purposes, 82A-204 (2)
 - designation as quasi-judicial board, 82A-204 (5)
 - powers and duties generally, 82A-204 (4)
 - departmental functions and responsibilities, 82A-201.1
 - depository board, existence, allocation to department for administrative purposes, 82A-209
 - game wardens' retirement board, existence, composition, 82A-210.1
 - judges' retirement board, existence, composition, 82A-210.2
 - merit system council, existence and composition, appointment, terms, and compensation of members, 82A-206
 - name changes and substitutions, 82A-215 to 82A-221
 - office of workers' compensation judge created, allocated to department for administrative purposes, 82A-1016
 - police reserve funds board of trustees abolished, functions transferred, 82A-222, 82A-223
 - state treasurer's office transferred to department for administrative purposes, exceptions, 82A-214
 - teachers' retirement board, existence and composition, appointment, qualifications, terms and oaths of members, 82A-212
 - allocated to department for administrative purpose, authority to hire personnel retained, 82A-212 (4)
- Department of agriculture, existence, 1972 Const., XII, 1; 82A-301
 - board of hail insurance transferred to department for administrative purposes, 82A-304.1
 - director as head of department, appointment, 82A-301
 - functions and responsibilities of department and units, 82A-301.1
 - wheat research and marketing committee, existence and composition, appointment, qualifications, terms, removal from and vacation of office, 82A-304
 - allocated to department for administrative purposes, 82A-304 (4)
- Department of business regulation created under state examiner, 82A-401
 - abolished agencies, functions transferred to department, 82A-402
 - board of food distributors renamed and continued in department, 82A-404
 - board of trade abolished, functions transferred to department, 82A-404
 - milk control board renamed and transferred to department, 82A-406
 - transfer of functions to department, 82A-402, 82A-403
- Department of community affairs created, 82A-901
 - board of aeronautics, composition, allocation, designation as quasi-judicial board, 82A-905
 - board of county printing, composition, allocated to department for administrative purposes, 82A-904
 - board of housing, composition, allocation, designation, 82A-907
 - functions and responsibilities of department and units, 82A-901.1
- Department of education—See STATE BOARD OF EDUCATION

INDEX

References are to Title and Section numbers

REORGANIZATION OF STATE GOVERNMENT (Continued)

- Department of fish and game created under commission, 82A-2001
 - aerial tramway safety board, department substituted for, 82A-2005
 - commission, composition, quasi-judicial functions, 82A-2004
 - director, appointment, qualifications, term, removal, functions, 82A-2003
 - functions of department, 82A-2001.1
 - outfitters' council, composition, qualifications and terms of members, allocation to the department, 82A-2005
 - passenger tramway safety board, department substituted for, 82A-2005
- Department of health and environmental sciences, legal existence, 82A-601
 - air pollution control advisory council, existence and composition, appointment of members, 82A-606
 - organization of council, compensation of members, 82A-110
 - board of health renamed and continued as quasi-judicial board, 82A-605
 - board of water and waste water operators, existence and composition, appointment of members, qualifications, term, allocation to department, 82A-612
 - departmental functions assigned to division, 82A-604
 - director as head of department, appointment, 82A-601
 - qualifications of director, 82A-608
 - division of environmental sciences, creation and functions, 82A-604
 - functions of department, 82A-601.1
 - name changes, 82A-613 to 82A-620
 - organization of councils, compensation of members, 82A-110
 - sanitarian advisory council abolished, 82A-610
 - water pollution control advisory council, existence and composition, appointment of members, 82A-607
- Department of highways, existence, 82A-701
 - board of highway appeals abolished, functions transferred, 82A-709
 - director as head of department, appointment, 82A-701
 - functions and responsibilities of department, 82A-701.1
 - highway commission, composition, 82A-706.1
 - allocated to department for administrative purposes, 82A-706.1 (3)
 - designation as quasi-judicial board, 82A-706.1 (4)
 - number of votes required for commission action, 82-706.1 (2)
- Department of institutions created, 82A-801
 - board of eugenics, composition, allocation, designation as quasi-judicial board, 82A-805
 - board of institutions, composition, allocation, designation as quasi-judicial board, 82A-806
 - board of pardons, composition, allocation, designation as quasi-judicial board, 82A-804
 - functions and responsibilities of department, 82A-801.1
- Department of justice created under attorney general, 82A-1201
 - abolished agencies, functions transferred, 82A-1202
 - crime control commission renamed and continued in department, organization and functions, 82A-1207
 - division of motor vehicles created, 82A-1204
 - functions transferred to division, 82A-1205
 - highway patrol functions, transfer to division, 82A-1206
 - fire prevention advisory commission abolished, 82A-1208
 - name of department changed, 82A-1209
 - transfer of functions to department, 82A-1202, 82A-1203
- Department of labor and industry created under commissioner, 1972 Const., XII, 2: 82A-1001
 - abolished agencies, functions transferred to department, 82A-1002
 - board of labor appeals created, organization, 82A-1008
 - functions transferred to board, 82A-1009
 - board of personnel appeals created within department, composition, functions, 82A-1014
 - commission on human rights, composition, allocation, designation as quasi-judicial board, 82A-1015
 - certain administrative rights retained in commission, 82A-1015 (4)

INDEX

References are to Title and Section numbers

REORGANIZATION OF STATE GOVERNMENT (Continued)

- Department of labor and industry created (Continued)
 - division of employment security created in department, 82A-1006
 - bureaus within division, 82A-1006
 - commission abolished and functions transferred, 82A-1007
 - division of workers' compensation created in department, 82A-1004
 - functions transferred to division, 82A-1005
 - occupational health advisory committee abolished, 82A-1011
 - study commission and board abolished, 82A-1010
 - transfer of functions to department, 82A-1002, 82A-1003
- Department of law enforcement and public safety, 82A-1201 to 82A-1209—See Department of justice, above
- Department of livestock—See LIVESTOCK, Department of livestock
- Department of military affairs—See MILITIA AND MILITARY, Department of military affairs
- Department of natural resources and conservation, existence, 82A-1501
 - board of natural resources and conservation as quasi-judicial board, allocation to department, 82A-1509
 - advisory capacity to department, 82A-1509 (5)
 - board of oil and gas conservation as quasi-judicial board, allocation to department, 82A-1508
 - director as head of department, appointment, 82A-1501
 - functions and responsibilities of department, 82A-1501.1
- Department of professional and occupational licensing created, 82A-1601
 - agencies allocated to department, 82A-1602 to 82A-1602.31
 - functions of agencies, 82A-1605
 - membership of agencies, 82A-1606
 - director as head of department, duties, 82A-1601, 82A-1604
 - duties of department, 82A-1603
- Department of public service regulation created, 82A-1701
 - name changes, 82A-1704 to 82A-1706
 - public service commission as head of department, 82A-1701
- Department of revenue created, 82A-1801
 - director as head of department, 82A-1801
 - creation of office, appointment, duties, 82A-1804
 - liquor control board abolished, functions transferred to department, 82A-1807
 - appeal of beer or liquor license decisions to state tax appeal board, 82A-1808
 - multi-state tax compact advisory committee abolished, 82A-1806
 - advisory council appointed, 82A-1803
 - transfer of functions to department, 82A-1802
- Department of social and rehabilitation services created, 82A-1901
 - board of veterans' affairs, existence and composition, appointment, qualifications and terms of members, 82A-1905
 - allocated to department for administrative purposes, hiring of personnel function retained, 82A-1905 (4)
 - director as head of department, 82A-1901
 - functions and responsibilities of department, 82A-1901.1
 - Title XX of Social Security Act, duties, 71-210.4, 71-210.5
 - veterans' welfare commission renamed and continued in department, 82A-1905
- Department of state lands created under board, 82A-1101
 - board created, 1972 Const., X, 4
 - commissioner's position created, functions, 82A-1104
 - functions of department, 82A-1101.1
- Directors, appointment by governor, 1972 Const., VI, 8; 82A-106
 - access to records before assuming office, 82A-109
 - powers and duties of directors, 82A-107
- Enumeration of departments and entities, 82A-104
 - number of principal departments, 1972 Const., VI, 7
- Federal aid requirements, adjustments for, 82A-122
- Federal-state co-ordinator's office transferred to governor's office, 82A-2101
- Governor's powers over department, 1972 Const., VI, 8; 82A-105
- Heads of departments, appointment, 1972 Const., VI, 8; 82A-106
 - access to records before assuming office, 82A-109
 - removal from office as provided by law, 1972 Const., V, 13
 - reports to governor, 1972 Const., VI, 15

INDEX

References are to Title and Section numbers

REORGANIZATION OF STATE GOVERNMENT (Continued)

- Obligations of agencies remain unaffected by transfer of functions, 82A-120
- Officers and employees transferred, rights unaffected, 82A-116
- Pending proceedings unaffected by transfer of functions, 82A-119
- Policy and purposes of reorganization, 82A-102
- Powers and duties of department heads, 82A-107
- Property of agencies transferred with functions, 82A-117
- Quasi-judicial boards, organization and membership, 82A-112
 - compensation and travel expenses of members, 82A-112 (7)
- Rules and regulations remain in effect after transfer of functions, 82A-118
- State board of education, 1972 Const. X, 9; 82A-501 to 82A-513—See STATE BOARD of EDUCATION
- Statutory and documentary references to agencies, application, 82A-121
- Temporary commissions, 1972., VI, 7
- Terminology used in internal structure of departments, 82A-104
- Unassigned agencies or functions, assignment by governor, 82A-115

REPORTERS

- Military court proceedings, compensation, 77-1906

REPORTS

- Annual report to governor
 - arts council, 82-3606
 - board of architects, 66-102, 82-4002
 - board of barbers, 82-4002, 82A-1602.5
 - board of chiropractors, 82-4002, 82A-1602.7
 - board of dentists, 82-4002, 82A-1602.9
 - board of optometrists, 82-4002, 82A-1602.19
 - board of osteopathic physicians, 82-4002, 82A-1602.2
 - board of pardons, 82-4002, 82A-804
 - board of pharmacists, 82-4002, 82A-1602.21
 - board of professional engineers and land surveyors, 82-4002, 82A-1602.11
 - board of trustees of state law library, 44-403
 - board of veterinarians, 82-4002, 82A-1602.24
 - commission on uniform state laws, 12-404
 - division of workers' compensation, 92-842
 - employment security commission, 87-120
 - industrial accident board, 92-118
 - oil and gas conservation board, 82-4002, 82A-1508
 - public service commission, 70-101, 82-4002
 - speech pathologists and audiologists, report of department, 66-3905 (6)
 - state board of hail insurance, 82-1519
 - state highway commission, 32-2409
- Contents of reports, 82-4002
- Definition of terms, 82-4001
- Frequency and periods covered by reports, 82-4002
- Governor's authority to require information from branches and departments of government, 1972 Const., VI, 15
- Gunshot or stab wounds to be reported by health care practitioner, 66-1050
 - immunity from liability, 66-1051
- Publication and distribution of reports, 82-4002

RESCUES AND ESCAPES

- Escape from prison, venue of prosecution, 95-409
- Interstate detainer, escape from custody on, penalty, 94-1101-4, redes. 95-3134
- Juvenile facilities of department of institutions, apprehension and return of absentee, 80-2211
 - penalty for aiding escape, 80-2212

RES JUDICATA

- Affirmative defense, M. R. Civ. P., Rule 8(c)

INDEX

References are to Title and Section numbers

RESTAURANTS

Licensing and regulation, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments

Wages of employees of lessees, protection, 41-2001 to 41-2011—See WAGES, Restaurant, Bar and Tavern Wage Protection Act

RESTRAINT OF TRADE

Bids for contracts, unlawful agreements for refunds or returns, penalty, 94-1104, redes. 51-401

Dairy products, application of provisions to, 3-24-130

Sale of commodities, penalty for unfair discrimination in, 51-409

School books, actions against dealer restricting competition, 75-7609

Unfair discrimination in purchase price of commodities, penalty for violation, 51-405

RETIREMENT

See PUBLIC EMPLOYEES' RETIREMENT ACT

Game wardens, 68-1401 to 68-1429—See FISH AND GAME, Wardens for enforcement of laws, retirement system

Judges, 93-1107 to 93-1132—See JUDGES, Retirement system

Sheriffs, 68-2601 et seq.—See SHERIFFS

Teachers, 75-6201 et seq.—See SCHOOLS

RETIREMENT HOMES

Lodging establishment regulations, 34-301 to 34-310—See HOTELS AND MOTELS

RIOTS

Criminal offense, punishment, 94-8-103

incitement to riot, elements of offense, punishment, 94-8-104

Governor's authority to call militia forces, 1972 Const., VI, 13

Importation of armed forces for preservation of peace or suppression of domestic violence, 1972 Const., II, 33

RIVERS

Physical alteration or modification of stream, written consent required, 26-1514—See CONSERVATION, The Natural Streambed and Land Preservation Act of 1975

ROADBLOCKS

Arrests at, requirements, 95-618

ROBBERY

Elements of offense, punishment, 94-5-401

"In the course of committing a theft" defined, 94-5-401 (3)

RODENTICIDES

See PESTICIDES, 27-213 to 27-245

RODEOS

Public drawings for attendance prizes or premiums exempt from lottery law, 94-8-302

ROOMING HOUSES

Lodging establishment regulations, 34-301 to 34-310—See HOTELS AND MOTELS

RUBBISH

See REFUSE DISPOSAL AREAS, 69-4001 et seq.; REFUSE DISPOSAL DISTRICTS, 69-6001 et seq.

RULES OF APPELLATE CIVIL PROCEDURE

See Title 93, Chapter 3001

INDEX

References are to Title and Section numbers

RULES OF CIVIL PROCEDURE

See Title 93, Chapter 2701

RULES OF CRIMINAL PROCEDURE

See 95-103 to 95-108

RURAL ELECTRIC AND TELEPHONE CO-OPERATIVES

Area served by co-operative, 14-530

newly served areas, 70-501 to 70-508—See ELECTRIC SUPPLIERS, Territorial integrity

Underground facilities, conversion to, 70-601 to 70-635—See PUBLIC UTILITIES, Underground conversion

RURAL IMPROVEMENT DISTRICTS

See COUNTIES, Rural improvement districts

S

SALARIES

Adjutant general, 82A-1405

Assignment of claims against state, 83-901 to 83-904

Central payroll system

death of employee, reissuance of warrant in name of designated person, 25-507.7
duplicate payroll warrants, 25-507.6

exceptions from, 25-507.1

lost or destroyed payroll warrants, 25-507.6

pay rate, determination of weekly or hourly, 25-507.9

payroll periods, 25-507.2

notice prior to change of period, 25-507.3

payroll roster, 25-507.4, 25-507.5

service charges, 25-507.10

state agencies, applicable to, 25-507.1

state auditor to install and operate, 25-507.1

state payroll revolving account, 25-507.8

uniform pay dates, 25-507.2

Commissioner of labor and industry, 41-1603

Commission to recommend compensation for judiciary and elective state officers, 1972

Const., XIII, 3; 59-1401 to 59-1404—See MONTANA SALARY COMMISSION

County officers, 25-605

fixing of salaries to be in accordance with schedule, 25-609.1

District court judges, 1972 Const., VII, 7; 93-303

Elected state officials, 1972 Const., VI, 5, VII, 7; 25-501

salary in full for all services, exceptions, 25-501.1

Highway patrolmen, 31-105

Justices of the peace, 1972 Const., VII, 5

Legislators, 1972 Const., V, 5

Lieutenant governor, 25-501

Schedules maintained by controller, 82-109.4

State board of equalization members, 84-702

State forester, 81-1403

Supreme court justices, 1972 Const., VII, 7

SALES

Acceleration of performance, good faith required in exercising option, 87A-1-208

Acceptance of goods

acts constituting acceptance, 87A-2-606

approval sales, effect, 87A-2-327

damages for nonacceptance by buyer, measure, 87A-2-708

evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515

failure to reject as acceptance, 87A-2-606

inspection rights of buyer, 87A-2-513

INDEX

References are to Title and Section numbers

SALES (Continued)

- Acceptance of goods (Continued)
 - nonconforming goods, buyer's right to accept or reject, 87A-2-601
 - effect of acceptance on remedies, 87A-2-607
 - recovery of damages by buyer, 87A-2-714
 - ownership rights, exercise as acceptance, 87A-2-606
 - partial acceptance of commercial unit, effect, 87A-2-606
 - payment before inspection not acceptance, 87A-2-512
 - payment required for goods accepted, 87A-2-607
 - revocation of acceptance, 87A-2-608
 - tender of delivery as condition to seller's right to acceptance, 87A-2-507
- Acceptance of offer, means permitted, 87A-2-206
 - additional terms proposed in acceptance, effect, 87A-2-207
 - auction sales, 87A-2-328
- Anticipatory repudiation, 87A-2-610
 - retraction of repudiation, 87A-2-611
- Approval sales, 87A-2-326, 87A-2-327
- Assignment of rights under contract, effect on parties, 87A-2-210
- Assortment of goods to be selected by buyer, 87A-2-311
- Assurance of performance, rights of parties to demand, 87A-2-609
- Auction sales, special provisions applicable, 87A-2-328
- Authenticity of third-party documents presumed, 87A-1-202
- Blood transfusion as service and not sale, 69-2203
- Breach of contract
 - remedies of seller, 87A-2-703
 - risk of loss, effect of breach on, 87A-2-510
- Bulk sales, 87A-6-101 to 87A-6-111—See BULK TRANSFERS
- Casualty to identified goods, effect on rights of parties, 87A-2-613
- C.&F. terms, effect on obligations, 87A-2-320, 87A-2-321
- C.I.F. terms, effect on obligations, 87A-2-320, 87A-2-321
- Citation of Uniform Commercial Code chapter, 87A-2-101
- Conditional sales, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
 - definition of term, 19-103
- Consignment sales, 87A-2-326, 87A-2-327
- Consumer sales statute unimpaired by Uniform Commercial Code, 87A-2-102
- Course of dealing between parties, application, 87A-1-205
- Course of performance, effect on contract, 87A-2-208
- Creditors' rights against sold goods
 - agreements as to applicable state law, restrictions, 87A-1-105
 - approval sales, claims of buyer's creditors against, 87A-2-326
 - buyer's interest taking priority, 87A-2-402
 - fraudulent sales, avoidance, 87A-2-402
 - return sales, claims of buyer's creditors against, 87A-2-326
 - voidable preference, sale constituting, 87A-2-402
- Damages for breach
 - agreements limiting or altering measure of damages, 87A-2-719
 - buyer's damages for nondelivery or repudiation, measure, 87A-2-713
 - incidental expenses of seller, items recoverable, 87A-2-710
 - liquidated damages, 87A-2-718
 - market price, determination, 87A-2-723
 - published quotations, use in evidence, 87A-2-724
 - penal damages prohibited, 87A-2-718
- Definition of terms, 87A-2-103
 - "agreement," 87A-2-106
 - "between merchants," 87A-2-104
 - "cancellation," 87A-2-106
 - "commercial unit," 87A-2-105
 - "conforming," 87A-2-106
 - "contract," 87A-2-106
 - "financing agency," 87A-2-104
 - "future" goods, 87A-2-105
 - general definitions in Commercial Code, 87A-1-201
 - "goods," 87A-2-105

INDEX

References are to Title and Section numbers

SALES (Continued)

Definition of terms (Continued)

index of definitions, 87A-2-103

"lot," 87A-2-105

"merchant," 87A-2-104

"present sale," 87A-2-106

"sale," 87A-2-106

"termination," 87A-2-106

Delegation of performance, effect on rights of parties, 87A-2-210

Delivery of goods

C.&F. terms, construction, 87A-2-320

C.I.F. terms, construction, 87A-2-320

cure by seller of improper tender or delivery, 87A-2-508

damages for nondelivery, measure, 87A-2-713

delay excused by failure of presupposed conditions, 87A-2-615

buyer's remedy on claim of excuse, 87A-2-616

evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515

excuse by failure of presupposed conditions, 87A-2-615

buyer's remedy on claim of excuse, 87A-2-616

ex-ship delivery terms, effect on obligation, 87A-2-322

F.A.S. terms, construction, 87A-2-319

F.O.B. terms, construction, 87A-2-319

no arrival, no sale term, effect on obligation, 87A-2-324

nonconforming goods, buyer's right to accept or reject, 87A-2-601

place of delivery in absence of agreement, 87A-2-308

remedies of buyer for nondelivery, 87A-2-711

shipment by seller as delivery, acts constituting, 87A-2-504

reservation of interest by seller shipping goods, 87A-2-505

shipment means to be selected by seller, 87A-2-311

single lot delivery presumed, 87A-2-307

stoppage in transit on breach or insolvency of buyer, 87A-2-705

indemnification of carrier for loss or expenses, 87A-7-504

substituted performance, when permitted, 87A-2-614

tender of delivery, requirements and acts constituting, 87A-2-503

time for delivery in absence of agreement, 87A-2-309

title passing on delivery in absence of agreement, 87A-2-401

Uniform Commercial Code, applicability, 74-325

Documents of title

adequacy of document governed by chapter on sales, 87A-7-509

customary banking channels used for delivery, 87A-2-308

defects apparent on face of document, payment as waiver of objection, 87A-2-605

draft against documents, acceptance for payment requiring delivery of documents, 87A-2-514

financing agency, rights acquired in documents, 87A-2-506

inspection of goods covered by document, 87A-2-513

overseas shipment, form of bill of lading required, 87A-2-323

shipping documents, tender required for delivery of goods, 87A-2-504

reservation of security interest by seller, 87A-2-505

stoppage in transit by seller

indemnification of carrier for losses and expenses, 87A-7-504

presentation of documents required, 87A-2-705

tender of document as tender of delivery, 87A-2-503

Duration of contract providing for successive performances, 87A-2-309

Exclusive dealing contracts, obligations imposed on parties, 87A-2-306

Excuse of performance by failure of presupposed conditions, 87A-2-615

buyer's remedies on claim of excuse, 87A-2-616

Ex-ship delivery terms, effect, 87A-2-322

Farmer sales statutes unimpaired by Uniform Commercial Code, 87A-2-102

F.A.S. terms, construction, 87A-2-319

Fiduciaries, validation of sales, 91-4324 et seq.

Financing agency purchasing draft, rights acquired, 87A-2-506

Firm offer to buy or sell, effect, 87A-2-205

INDEX

References are to Title and Section numbers

SALES (Continued)

- F.O.B. terms, construction, 87A-2-319
- Formal requisites for contract of sale, 87A-2-204
- Fraud, remedies available, 87A-2-721
- Fungible goods
 - undivided share in identified bulk, sale permitted, 87A-2-105
 - warehouse receipt claim subordinate to buyer from warehouseman, 87A-7-205
- Good faith required, 87A-1-203
- Identification of goods, time of occurrence, 87A-2-501
- Indian articles, regulations for sale of imitation articles, 85-301 to 85-304
- Infringement actions against buyer, rights of seller to defend, 87A-2-607
- Insecurity of contract, rights of parties to demand assurance, 87A-2-609
- Insolvency of buyer, remedies available to seller, 87A-2-702
- Insolvency of seller, buyer's right to goods, 87A-2-502
- Inspection rights of buyer of goods, 87A-2-513
 - evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515
- Installment contracts, effect of breach, 87A-2-612
- Insurable interest of buyer and seller in goods, 87A-2-501
- Judicial sales validated despite defects, 93-5846
- Letter of credit, failure of buyer to furnish, 87A-2-325
- Limitation of actions arising out of contract, 87A-2-725
- Liquidated damage clauses, 87A-2-718
- Market price, determination, 87A-2-723
 - published quotations, use in evidence, 87A-2-724
- Merchantable goods, definition, 87A-2-314
- Modification of contract, means permitted, 87A-2-209
- No arrival, no sale term, effect on obligations, 87A-2-324
- Obligations of parties in general, 87A-2-301
- Open terms in contract, effect, 87A-2-204
 - price left open, 87A-2-305
- Optional means of performance not invalidating contract, 87A-2-311
- Oral evidence to vary written agreement, 87A-2-202
- Output of seller, contracts measuring quantity by, 87A-2-306
- Overseas shipments, form of bill of lading required, 87A-2-323
- Parol evidence to vary written agreement, 87A-2-202
- Part interest in identified goods, sale permitted, 87A-2-105
- Payment for goods
 - acceptance creating duty to pay, 87A-2-607
 - apportionment where delivery is in lots, 87A-2-307
 - C.&F. terms, construction, 87A-2-320, 87A-2-321
 - check payment conditional on honor, 87A-2-511
 - C.I.F. terms, construction, 87A-2-320, 87A-2-321
 - F.A.S. terms, effect on obligation, 87A-2-319
 - F.O.B. terms, effect on obligation, 87A-2-319
 - forms of payment permissible, 87A-2-304
 - inspection by buyer before payment, 87A-2-310
 - letter of credit, delivery suspending obligation to pay, 87A-2-325
 - nonconformity of goods, effect where contract requires payment before inspection, 87A-2-512
 - open price terms in contract, 87A-2-305
 - property to be used in payment, 87A-2-304
 - substituted means of payment, when permitted, 87A-2-614
 - tender of delivery as condition to right to payment, 87A-2-507
 - tender of payment, forms permitted, 87A-2-511
 - time for payment or running of credit, 87A-2-310
- Penalty clauses unenforceable, 87A-2-718
- Realty, contract requiring severance of goods from, 87A-2-107
- Rejection of goods
 - acceptance of nonconforming goods precluding rejection, 87A-2-607
 - installment contracts, effect of rejection of installment, 87A-2-612
 - instructions from seller as to disposition of goods, 87A-2-603
 - nonconforming goods, buyer's right to accept or reject, 87A-2-601
 - notice of rejection to seller, 87A-2-602

INDEX

References are to Title and Section numbers

SALES (Continued)

Rejection of goods (Continued)

- obligations of buyer with respect to rejected goods, 87A-2-602
- merchant buyer's duties, 87A-2-603
- return of goods to seller, 87A-2-604
- sale of rejected goods by buyer, 87A-2-603, 87A-2-604
- salvage of rejected goods by buyer, 87A-2-604
- security interests of buyer in rejected goods, 87A-2-711
- storage of rejected goods for seller's account, 87A-2-604
- time allowed for rejection, 87A-2-602
- waiver of objections by failure to particularize, 87A-2-605

Remedies of buyer, 87A-2-711

- agreements limiting or excluding remedies, 87A-2-719
- ancillary obligations, remedies unimpaired by Commercial Code chapter, 87A-2-701
- anticipatory repudiation, 87A-2-610
- cancellation of contract, remedies preserved, 87A-2-720
- collateral obligations, remedies for unimpaired by Commercial Code chapter, 87A-2-701
- consequential damages recoverable from seller, 87A-2-715
- covering purchases of substitute goods, 87A-2-712
- damages for nondelivery or repudiation by seller, measure, 87A-2-713
- deduction of damages from contract price, 87A-2-717
- fraud of seller, remedies available, 87A-2-721
- incidental damages recoverable from seller, 87A-2-715
- limitation of actions, 87A-2-725
- liquidated damages, 87A-2-718
- nonconforming goods, recovery after acceptance, 87A-2-714
- recovery of identified goods, 87A-2-716
- rescission of contract, remedies preserved, 87A-2-720
- security interests in rejected goods, 87A-2-711
- specific performance, when authorized, 87A-2-716
- third parties, actions against for injury to goods, 87A-2-722
- warranty, damages for breach, 87A-2-714

Remedies of seller, 87A-2-703

- agent standing in position of seller, 87A-2-707
- agreements limiting or excluding remedies, 87A-2-719
- ancillary obligations, remedies unimpaired by commercial code chapter, 87A-2-701
- anticipatory repudiation, 87A-2-610
- cancellation of contract, remedies preserved, 87A-2-720
- collateral obligations, remedies unimpaired by commercial code chapter, 87A-2-701
- completion of unfinished goods, 87A-2-704
- damages for nonacceptance or repudiation, measure, 87A-2-708
- fraud of buyer, remedies available, 87A-2-721
- identification of goods to contract after breach, 87A-2-704
- incidental damages, items included, 87A-2-710
- insolvency of buyer, remedies available on discovery, 87A-2-702
- limitation of actions, 87A-2-725
- liquidated damages, 87A-2-718
- price of goods, recovery from buyer, 87A-2-709
- resale of goods and recovery of difference from buyer, 87A-2-706
- rescission of contract, remedies preserved, 87A-2-720
- salvage of unfinished goods, 87A-2-704
- secured creditor standing in position of seller, 87A-2-707
- stoppage of delivery in transit, 87A-2-705
- indemnification of carrier for expenses or loss, 87A-7-504
- third parties, actions against for injury to goods, 87A-2-722

Repudiation of contract

- anticipatory repudiation, 87A-2-610
- retraction of repudiation, 87A-2-611
- damages for repudiation by buyer, measure, 87A-2-708
- damages for repudiation by seller, measure, 87A-2-713
- remedies of buyer, 87A-2-711
- remedies of seller, 87A-2-703

Requirements of buyer, contract measuring quantity by, 87A-2-306

INDEX

References are to Title and Section numbers

SALES (Continued)

- Rescission of contract, means permitted, 87A-2-209
- Reservation of rights by party while performing or accepting performance, 87A-1-207
- Retail installment sales act, 74-601 to 74-612—See **INSTALLMENT SALES ACT**
- Return of goods, contract permitting, 87A-2-326, 87A-2-327
- Risk of loss
 - agreements shifting or dividing risk, 87A-2-303
 - approval sales, effect, 87A-2-327
 - breach of contract, effect on risk, 87A-2-510
 - C.&F. terms, effect, 87A-2-320, 87A-2-321
 - C.I.F. terms, effect, 87A-2-320, 87A-2-321
 - ex-ship delivery terms, effect, 87A-2-322
 - F.A.S. terms, effect, 87A-2-319
 - F.O.B. terms, effect, 87A-2-319
 - no arrival, no sale term, effect, 87A-2-324
 - passage of risk, principles for determining time, 87A-2-509
 - return sales, effect, 87A-2-327
- Scope of Uniform Commercial Code chapter, 87A-2-102
- Seals on writings inoperative, 87A-2-203
- Security interest retained by seller, law governing interest, 87A-9-113, 87A-9-206
- Security transactions exempt from Uniform Commercial Code chapter, 87A-2-102
- Severance of goods from realty, sale contract required, 87A-2-107
- Short title of Uniform Commercial Code chapter, 87A-2-101
- Statute of frauds
 - goods, contracts for sale of, 87A-2-201
 - property other than goods and securities, 87A-1-206
- Statute of limitations in contracts for sale, 87A-2-725
- Statutes unimpaired by Uniform Commercial Code chapter, 87A-2-102
- Substituted performance, when permitted, 87A-2-614
- Termination of contract
 - indefinite duration contracts, 87A-2-309
 - notice of termination by party, 87A-2-309
- Time allowed for required actions, 87A-1-204
- Transfer of title
 - approval sales, effect, 87A-2-327
 - cattle, interstate shipment of, 87A-2-401
 - delivery constituting transfer in absence of agreement, 87A-2-401
 - entrusting of goods to merchant, merchant's power to transfer title, 87A-2-403
 - identification of goods required for passage, 87A-2-401
 - rejection or refusal by buyer, reversion of title, 87A-2-401
 - reservation of title by seller after delivery limited to security interest, 87A-2-401
 - voidable title giving power to transfer good title, 87A-2-403
- Unconscionable provisions, effect on contract, 87A-2-302
- Undivided share of fungible goods, sale permitted, 87A-2-105
- Usage of trade, application, 87A-1-205
- Waiver of executory portion of contract, effect, 87A-2-209
- Warranties
 - action against buyer for breach of warranty, duty to notify seller, 87A-2-607
 - affirmation creating express warranty, 87A-2-313
 - conflicting warranties, resolving, 87A-2-317
 - consequential damages recoverable for breach, 87A-2-715
 - course of dealing creating implied warranty, 87A-2-314
 - cumulation of warranties where reasonable, 87A-2-317
 - damages for breach of warranty, measure, 87A-2-714
 - description creating express warranty of conformity, 87A-2-313
 - encumbrance, warranty against, 87A-2-312
 - exclusion of warranties by agreement, 87A-2-316
 - express warranties, means of creation, 87A-2-313
 - fitness for particular purpose warranted where buyer relies on seller's judgment, 87A-2-315
 - implied warranties, 87A-2-314, 87A-2-315
 - infringement, warranty against, 87A-2-312

INDEX

References are to Title and Section numbers

SALES (Continued)

Warranties (Continued)

- merchantability warranted by implication, 87A-2-314
- modification of warranties by agreement, 87A-2-316
- promise creating express warranty, 87A-2-313
- remedies for breach of warranty, limitation by agreement, 87A-2-316
- sample creating express warranty of conformity, 87A-2-313
- third-party beneficiaries of warranties, 87A-2-318
- title to goods, 87A-2-312
- Uniform Commercial Code, applicability, 74-325
- usage of trade creating implied warranty, 87A-2-314

SANITARIANS

Board of sanitarians, existence, composition, appointment and qualifications of members, 69-3412

- chairman, appointment, 69-3414
- compensation of members, 69-3414
- meetings of board, frequency, 69-3414
- rules, adoption authorized, 69-3418
- terms of members, 69-3413

Definition of terms, 69-3410

Fees deposited in earmarked revenue fund for use of board, 69-3417

License required for practice of profession, 69-3411

- application for license, 69-3415
- expiration and annual renewal, fee, 69-3416 (2) (3)
- fee for license, 69-3416 (1)
- initials appended to name of certificate holder, 69-3415 (4)
- issuance of certificate, 69-3415 (4)
- nonresidents, licensing without examination, fee, 69-3419
- probationary certificate issued upon making application and payment of fee, 69-3415 (3)
- qualifications of applicants, meeting minimum standards required, 69-3415 (2)
- revocation or suspension of license, grounds, authority of board, 69-3418

Practicing without license as misdemeanor, penalty, 69-3420

Previously practicing sanitarians registered upon making application and payment of fee, 69-3422

Prior registration still valid, 69-3421

Rules and orders previously adopted effective until repealed or amended by board, 69-3423

"Sanitarian" defined, 69-3410

SANITARY LICENSEES

Application for license, contents, 69-5402

Denial, suspension or revocation of license, 69-5401

Enforcement of license requirements, 69-5408

Expiration of licenses, 69-5403

Fee for license, 69-5403

Issuance and numbering of licenses, 69-5403

License required for business of cleaning cesspools, septic tanks or privies, 69-5401

Penalty for violations, 69-5408

Public agencies exempt from license requirement, 69-5407

Rules adopted by department, 69-5406

Validation signature affixed to license by local health officer or sanitarian, 69-5405

Vehicles of licensees, marking, 69-5404

SAVINGS AND LOAN ASSOCIATIONS

Accounts excluded from chapter on secured transactions, 87A-9-104

Depositories of public funds, eligibility, 16-2618, 79-301, 79-306

Discrimination by financial institutions unlawful, 64-306 (4)—See CIVIL RIGHTS,

Discriminatory practices

"financial institution" defined, 64-305 (8)

Dissolution of association, when distribution presumed abandoned, 67-2206—See also PROPERTY, Unclaimed property

INDEX

References are to Title and Section numbers

SAVINGS AND LOAN ASSOCIATIONS (Continued)

Interest on loans and discounts not to exceed lawful rate, installment loan charges specified, 5-527

Real estate loans permitted, 7-113.1

Retail installment sales act

compliance with provisions of act other than licensing required, 74-603
licensing under not required, 74-603

Unclaimed deposits, when presumed abandoned, 67-2202—See PROPERTY, Unclaimed property

SAW MILLS

Portable saw mills operating upon forests lands, license required, 28-801 to 28-806—
See FORESTS AND FORESTRY, Portable saw mills

SCHOOL DISTRICTS AND TRUSTEES

Abandonment of districts

bonded indebtedness remains charge against original territory, 75-6529

cash and debts, disposition, 75-6532

elementary district abandoned, notice and attachment to another district, 75-6512

joint elementary district, 75-6513

high school district abandoned, attachment to another district, 75-6524

property of district, title vested in district to which attached, 75-6536

records surrendered to trustees of new district or county superintendent, 75-6537

tax valuation basis for district to which attached, 75-6530

trustees of district to which attached remain in office, 75-6531

Adult education fund, establishment and tax levy for, 75-7207

Annexation of districts

bonded indebtedness as charge against original territory, 75-6529

cash and debts, disposition, 75-6532

elementary districts, when annexation permitted, 75-6507

election on annexation with assumption of bonded indebtedness, 75-6509

election on annexation without assumption of bonded indebtedness, 75-6510

procedure for annexation, 75-6508

high school districts

approval by superintendent of public instruction required, 75-6528

hearing and order by high school boundary commission, 75-6521

joint district, when establishment authorized, 75-6525

procedure for establishment of district, 75-6526

protest and counter-proposition by electors of elementary district, 75-6523

resolution of trustees sent to county superintendent, 75-6519

property of annexed district, title vesting in annexing district, 75-6536

records of annexed district, surrender to trustees of annexing district, 75-6537

tax valuation basis for annexing district, 75-6530

trustees of annexing district continue in office, 75-6531

voluntary incentive plan

additional bonus payments for additional districts included, 75-6547

amount of bonuses offered, 75-6541

application for bonus payments, contents, 75-6543

approval or disapproval of bonuses by superintendent of public instruction,
75-6544

definition of terms, 75-6541

disbursement and deposit of bonus payments, 75-6545

eligibility for bonus payments, 75-6542

purpose of plan, 75-6540

reduction in territory, disqualification of district by, 75-6546

Appeals to county superintendent from trustees, 75-5811

Bond issues of district

amortization bonds preferred over serial bonds, 75-7106, 75-7121

definition of terms, 75-7105

backdating of bond issues, 75-7108

conflict of laws, resolving, 75-7101

dating of bond issues, 75-7108

INDEX

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)

Bond issues of district (Continued)

debt service fund

- budgeting for debt service fund, 75-7127
- investment of moneys in debt service fund, 75-7130
- payments from debt service fund, 75-7129
- redemption of bonds from debt service fund, 75-7130
- refunding bond issue reduced by use of debt service fund, 75-7104
- revenues credited to debt service fund, 75-7129
- surplus in fund, disposition, 73-7132
- tax levy for debt service fund, 75-7128

districts to which provisions apply, 75-7102

election required for bond issue, 75-7110

- ballots for bond elections, 75-7115
- canvass of votes in bond election, 75-7117
- notice of bond election, 75-7116
- number of affirmative votes required to approve bonds, 75-7117
- petition proposing election, contents, 75-7112
- submission and certification of petition, 75-7113
- trustees' action on petition, 75-7114
- refunding bonds, election not required, 75-7109
- resolution for election, 75-7110
- terms of bonds set forth in resolution, 75-7111

execution of bonds, 75-7122

form of bonds, 75-7122

interest rate on bonds, 75-7107, 79-2602

definition of terms, 79-2601

laws applicable to bond issues, 75-7101

legal assistance in bond proceedings, 75-7125

liability of district on bonds, 75-7126

maturity dates of bonds, 75-7107

maximum bond issue based on tax valuation, 75-7104

new major industrial facility increasing limitation, 75-7104 (2)

payment and cancellation of bonds and coupons, 75-7131

printing of bonds, 75-7122

purposes for which bonds authorized, 75-7103

redemption of bonds from debt service fund, 75-7130

bonds held by state, 79-1105

bonds to include provisions for redemption, 75-7107

refunding bonds authorized without election, 75-7109

debt service fund applied to reduce refunding bond issue, 75-7104

registration of bonds, 75-7123

resolution for bond issue, terms of bonds set forth, 75-7118

sale of bonds

bids, acceptance by trustees, 75-7121

combining with other districts for sale of bonds authorized, 75-7121 (2)

credit of proceeds to school district funds, 75-7124

delivery of bonds to purchaser, 75-7124

fees and commissions for assisting in sale prohibited, 75-7121

investment of proceeds of sale, 75-7124

notice of sale, contents, 75-7119

publication of notice, 75-7120

notice to board of investments, waiver, 79-1102, 79-1103

price at which bonds sold, 75-7121

proceeds of sale, failure to pay into treasury as felony, 75-7124

rejection of bids and private sale, 75-7121

Boundaries of districts

correction and adjustment of descriptions by superintendent, 75-6504

elementary school district, change of boundaries, procedure, 75-6516.1

periodical review of boundaries by county superintendent, 75-6516.2

records of boundaries maintained by county commissioners, 75-6504

time of year when boundary changes prohibited, 75-6505

INDEX

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)

Budget system

- adult education fund, 75-7207
- assessed value statement delivered to county superintendent and to each city and town in district, 75-6711
- building reserve fund, 75-7206
- county board of school budget supervisors, 75-6703
- debt service fund, budgeting for, 75-7127
- department of revenue statement of property valuations furnished to county superintendent, 75-6711
- districts to which requirements apply, 75-6701
- emergency budget authorized, 75-6724
 - circumstances justifying emergency budget, 75-6723
 - filing and delivery of adopted budget, 75-6728
 - final emergency budget adoption by county board, 75-6727
 - hearing on emergency budget, 75-6727
 - maximum amount of emergency budget, 75-6727
 - petition for approval of emergency budget by superintendent of public instruction, 75-6725
 - resolution for emergency budget, contents and adoption, 75-6725
 - publication and posting of resolution, 75-6726
 - state aid to emergency budget, 75-6729
 - tax levy for emergency budgets, 75-6730
 - time of adoption, 75-6724
 - transportation contract, emergency budget for, 75-6727
 - treasurer's report on emergency budget, 75-6730
- estimates of interest and income moneys for budgeting purposes, 75-6911
- estimates of state equalization aid for budgeting purposes, 75-6920
- federal funds, allocation to budget items, 75-6718
- final budget, adoption by county board, 75-6713
 - adjustments and corrections by budget board, 75-6714
 - adoption of final budget, 75-6716
 - estimates of revenue furnished by county superintendent, 75-6712
 - filing and distribution of copies of final budget, 75-6719
 - hearing of district trustees on corrections and adjustments, 75-6714
 - notice of final budget meeting, 75-6709
 - reduction of general fund budget exceeding lawful maximum, 75-6715
- forms prescribed and distributed by superintendent of public instruction, 75-6704
- initial budget items and estimates, entry by county superintendent, 75-6705
- joint district budgeting procedures
 - assessed value statement to be delivered to county superintendents and commissioners, 75-6711
 - county officials performing budgeting functions for district, 75-6720
 - preliminary budgets and estimates, preparation, 75-6721
 - tax levies for joint districts, 75-6722
- maximum general fund budget without a voted levy, 75-6905
- nonoperating fund budget, 75-7210
- post-secondary vocational-technical center fund, 75-7208, 75-7708
- preliminary budget, preparation and adoption by trustees, 75-6707
 - availability of preliminary budget for inspection by taxpayers, 75-6709
 - county superintendent to prepare budget on failure by trustees, 75-6708
 - notice of preliminary budget meeting, 75-6706
- regulations established by superintendent of public instruction, 75-6702
- retirement fund, 75-7204
- separate budget for each district, 75-6701
- supervision by superintendent of public instruction, 75-6702
- tax levy by county commissioners based on final budget, 75-6717
- transportation budget, 75-7020
- treasurer's statement of cash balances and bond information furnished to county superintendent, 75-6710
- tuition fund for elementary pupils, 75-7203

INDEX

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)

- Building fund, establishment and administration, 75-7213
- Building reserve fund, authorization and purpose, 75-7205
 - budgeting and tax levy for fund, 75-7206
- Chairman of trustees, duties, 75-5927
- Child care institution district boundaries changed by acquisition of land, 75-6515
- Classes of districts, 75-6503
- Clerk of district, appointment, 75-5927
 - powers and duties, 75-5935
- Collective action required, 75-5901
- Community college districts, 75-8101 to 75-8133—See COLLEGES AND UNIVERSITIES, Community colleges
- Consolidation of districts
 - bonded indebtedness as charge against original territory, 75-6529
 - cash and debts, disposition, 75-6533
 - elementary districts, procedure for consolidation, 75-6506
 - election on consolidation with assumption of bonded indebtedness, 75-6509
 - election on consolidation without assumption of bonded indebtedness, 75-6510
 - joint district in two or more counties formed by consolidation, 75-6511
 - high school districts
 - approval by superintendent of public instruction required, 75-6528
 - county commissioners ordering consolidation of districts, 75-6527
 - hearing and order by high school boundary commission, 75-6521
 - joint district, when establishment permitted, 75-6525
 - procedure for establishment, 75-6526
 - protest and counter-proposition by electors of elementary district, 75-6523
 - resolution of trustees sent to county superintendent, 75-6519
 - property, vesting of title in consolidated district, 75-6536
 - records of old districts surrendered to trustees of consolidated district, 75-6537
 - tax valuation basis for consolidated district, 75-6530
 - voluntary incentive plan
 - additional payments on addition of other districts, 75-6547
 - amount of bonuses offered, 75-6541
 - application for bonus payments, contents, 75-6543
 - approval or disapproval of application by superintendent of public instruction, 75-6544
 - definition of terms, 75-6541
 - disbursement and deposit of bonus payments, 75-6545
 - eligibility for bonuses, 75-6542
 - purpose of plan, 75-6540
 - reduction in territory, district disqualified by, 75-6546
- Constitutional provision for supervision and control of schools in districts, 1972 Const., X, 8
- Contracts of district
 - advertising and award to lowest responsible bidder, 75-6808
 - preference to Montana bidders, 82-1924
 - definition of residence, 82-1925
 - federal aid projects exempt, 82-1926
 - materials and labor from state, preference to, 82-1926
- Corporate powers of district, 75-6501
- County superintendent, consultation with trustees, 75-5808—See COUNTY SUPERINTENDENT OF SCHOOLS
 - meetings called by superintendent, 75-5807
- Definition of terms used throughout title, 75-5901
- Definition of types of districts, 75-6501
- Dissolution of joint elementary district, procedure for, 75-6514
 - bonded indebtedness remains charge against original territory, 75-6529
 - cash and debts, disposition, 75-6532
 - property of district, vesting of title in district to which attached, 75-6536
 - records surrendered to trustees of new district or county superintendent, 75-6537
 - tax valuation basis for district to which attached, 75-6530
 - trustees of district to which attached remain in office, 75-6531

INDEX

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)

- Division of county into high school districts
 - approval by superintendent of public instruction required, 75-6528
 - elementary district divided, approval by electors required, 75-6522
 - hearing and order by high school boundary commission, 75-6521
 - request by trustees of district, 75-6520
- Election of trustees, 1972 Const., X, 8
 - annual election, 75-5912
 - ballot form, 75-5915
 - conduct of election, 75-5915
 - high school district operating county high school, conversion to elective system for trustees, 75-5923
 - composition of board after election, 75-5924
 - nominations for office, 75-5913
 - petition of electors, time of submission, contents, election, 75-5914.1
- Elections on school matters
 - absentee voting, 75-6416
 - superintendent of public instruction to prepare forms, 23-3702, 75-5707
 - annual election days, 75-6404
 - ballot required in all elections, 75-6403
 - format of ballot, establishment by trustees, 75-6408
 - bond elections, 75-7110 to 75-7117—See Bond issues, above
 - canvass of votes by trustees, 75-6423
 - certificate of election, issuance, 75-6423
 - challenge of electors, 75-6412
 - clerks of election, designation, 75-6419
 - conduct of election, 75-6421, 75-6422
 - conflicting provisions in general election law, 75-6402
 - counting of ballots, 75-6422
 - date of annual elections, 75-6404
 - elections to which provisions apply, 75-6401
 - electronic voting systems, use in school elections, 75-6417
 - expenses of election, sources of payment, 75-6420
 - hours of polling, 75-6405
 - morning hours established by trustees, 75-6408
 - judges of election, appointment and notice, 75-6408
 - compensation of judges, 75-6420
 - replacement of absent judge, 75-6419
 - list of registered electors prepared for polling places, 75-6414
 - delivery of and charges for lists, 75-6415
 - signature of list by electors voting, 75-6422
 - notice of election, posting, publication and contents, 75-6409
 - opening and closing of polls, 75-6405
 - morning hours established by trustees, 75-6408
 - order for election, time limitation for election, 75-6407
 - resolution adopted by trustees, 75-6406
 - pollbook kept by election clerk, 75-6422
 - polling places for elections, 75-6408
 - publication of election results, 75-6423
 - qualifications of electors, 75-6410
 - registration of voters, closing, 75-6413
 - registration of voters, resident district to be shown, 23-3004.1
 - resolution of election, contents, when adopted and transmittal, 75-6406
 - return of records and supplies to district trustees, 75-6422
 - special elections, when called, 75-6404
 - supervision of elections by trustees, 75-6418
 - supplies provided to polling places, 75-6418
 - voting machines, use in school elections, 75-6417
- Eligibility for office of trustee, 75-5913
- Employment and dismissal of personnel, 75-5934
- Endowment fund, investment and administration, 75-7309
- Equalization aid, 75-6901 to 75-6927—See SCHOOLS, Equalization aid

INDEX

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)

Examination of accounts by department of intergovernmental relations, 82-4501 to 82-4514—See DEPARTMENT OF INTERGOVERNMENTAL RELATIONS, Examination of accounts

Existing districts continued, 75-6502

Federal programs fund, establishment and administration, 75-7212

Financial administration

annual financial report of county superintendent, 75-6804

appropriated amounts, fund opened by treasurer, 75-6809

depletion of account, notice by county treasurer, 75-6811

lapse of appropriations at end of year, 75-6813

transfers between appropriation items, 75-6812

warrants, charging against appropriations, 75-6811

auditing of district records, 75-6807

cash reserves at end of year for payment of general fund warrants, 75-6924

contracts and purchases, advertising and award to lowest responsible bidder, 75-6808

splitting of contracts to circumvent requirement prohibited, 75-6808.1

districts to which provisions apply, 75-6802

expenditures, documentation required, 75-6809.1

funds defined and classified, 75-6801

joint districts, county officers acting for, 75-6803

lapse of budgeted appropriations at end of year, 75-6813

moneys to which provisions apply, 75-6802

nonbudgeted funds, expenditures limited to cash balance, 75-6814

pecuniary interest of trustee prohibited, 75-6808

rules and regulations of superintendent, 75-6802

supervision by superintendent of public instruction, 75-6802

transfers between appropriation items, 75-6812

treasurer's duties as custodian of funds, 75-6805

appropriated amounts, entry in fund records, 75-6809

warrants, recording and payment, 75-6811

trustees' duties, 75-6806

warrants, issuance, 75-6810

warrants issued by trustees of district, 75-6810

cancellation for lapse of time, issuance of duplicate warrant, 75-6811.1

recording and payment by county treasurer, 75-6811

Fiscal year of schools, 75-7402

Food services fund, establishment and administration, 75-7211, 75-8005

Funds established by districts

adult education fund, 75-7207

building fund, 75-7213

building reserve fund, 75-7205, 75-7206

endowment fund, 75-7309

federal programs fund, 75-7212

food services fund, 75-7211, 75-8005

housing and dormitory fund, 75-7214

interlocal co-operative agreement fund, 75-7216

nonoperating fund, 75-7209, 75-7210

post-secondary vocational-technical center fund, 75-7208, 75-7708

retirement fund, 75-7204

traffic education fund, 75-7215, 75-7907

tuition fund for elementary pupils, 75-7203

Housing and dormitory fund, establishment and administration, 75-7214

Impact grants for large-scale coal development affecting district, 50-1801 to 50-1810—

See MINES AND MINING, Large-scale coal development

Interlocal co-operation, 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION

Interlocal co-operative agreement fund, establishment and administration, 75-7216

Investment of surplus funds, 16-2050

short term investment of current funds in time deposits authorized, 16-2618 (8)

Joint board of trustees, formation and organization, 75-5928

powers of joint board, 75-5929

INDEX

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)

- Judgment against district, liability for, 75-5940
- Legal assistance by county attorney, 75-8305
 - conflict of interest, employment of other attorney, 75-8305.1
- Liability insurance covering district and employees, 75-5939
- Meetings of trustees, 75-5930
- Names and numbers of districts, 75-6501
- New districts, creation
 - bonded indebtedness remains charge against original territory, 75-6529
 - cash and debts, disposition, 75-6534
 - elementary district, conditions required for creation, 75-6517
 - procedure for creation of elementary district, 75-6518
 - high school district
 - approval by superintendent of public instruction required, 75-6528
 - elementary district divided, approval by electors required, 75-6522
 - hearing and order by high school boundary commission, 75-6521
 - protest and counter-proposition by electors of elementary district, 75-6523
 - resolution of trustees sent to county superintendent, 75-6519
 - property of district, title vested in new district, 75-6536
 - records surrendered to trustees of new district, 75-6537
 - tax valuation basis of new district, 75-6530
- Nonoperating fund, purpose and establishment, 75-7209
 - budgeting and tax levy for fund, 75-7210
- Number of trustee positions in district, 75-5902
 - additional positions in high school districts, 75-5903
 - districts for nomination of additional trustees, 75-5904
 - election of additional trustees, 75-5904
 - redetermination of additional trustee positions, 75-5905
 - change in classification of district, 75-6503
- Oath of office, 75-5916
 - time of taking oath, 75-8304
 - vacancy, person appointed to fill, 75-5918
- Organization meeting of trustees, 75-5927
- Pecuniary interest of trustees in contracts prohibited, 75-6808
- Penalty for violations not otherwise covered, 75-8307
- Personal liability of trustees, 75-5941
- Physician or nurse, retention by trustees, 75-5934
- Post-secondary vocational-technical center fund, establishment and budgeting for, 75-7208, 75-7708
- Powers and duties of trustees in general, 1972 Const., X, 8; 75-5932, 75-5933
- Property of district, trustees' power over, 75-8201
 - delivery to successor trustee or officer, 75-5926
 - insurance on property carried by trustees, 75-8212
 - sale of abandoned, obsolete or undesirable property by trustees, 75-8205
 - tax exemption, 1972 Const., VIII, 5
- Public works projects, splitting of contract to avoid competitive bidding prohibited, 75-6808.1
- Purchases by district
 - advertising and award to lowest responsible bidder, 75-6808
 - preference to Montana bidders, 82-1924
 - contract provision for preference in materials and labor, 82-1926
 - definition of residence, 82-1925
 - federal aid projects exempt, 82-1926
- Quorum of trustees, 75-5930
- Record of actions of trustees, 75-5932
- Redivision of county into high school districts
 - approval by superintendent of public instruction required, 75-6528
 - elementary district divided, approval by electors required, 75-6522
 - hearing and order by high school boundary commission, 75-6521
 - resolution of trustees sent to county superintendent, 75-6519
- Removal of trustee from office, 75-5919

INDEX

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)

- Reports to county superintendent and state officials, 75-5934
- Sale of goods or services to school district as misdemeanor, penalty, 75-8303
- Service of process on school districts, M. R. Civ. P., Rule 4D(2)
- Severability of provisions, 75-8311
- Terms of office of trustees, 75-5906
 - additional trustees, adjustment of terms for staggering, 75-5909
 - change of classification of district, adjustment of terms on, 75-5910
 - first trustees, determination of terms by lot, 75-5908
 - high school district operating county high school, 75-5925
 - staggered terms, 75-5907
 - vacancy, term for which filled, 75-5911
- Traffic education fund, establishment and administration, 75-7215, 75-7907
- Transfer of territory between districts
 - bonded indebtedness remains charge against original territory, 75-6529
 - cash and debts not transferred, 75-6535
 - elementary districts, transfer between, 75-6516
 - boundary adjustments between districts, periodical review by county superintendent, 75-6516.1, 75-6516.2
 - high school districts
 - approval by superintendent of public instruction required, 75-6528
 - elementary district divided, approval by electors required, 75-6522
 - hearing and order by high school boundary commission, 75-6521
 - joint district, when establishment authorized, 75-6525
 - procedure for establishment of districts, 75-6526
 - protest and counter-proposition by electors of elementary district, 75-6523
 - resolution of trustees sent to county superintendent, 75-6519
 - property located in transferred territory, vesting of title in new district, 75-6536
 - tax valuation basis of gaining and losing districts, 75-6530
 - trustees of districts continue in office, 75-6531
- Travel reimbursement of trustees and secretary, 75-5931
 - educational conventions, 25-508
- Types of districts enumerated and described, 75-6501
- Unified county high school and elementary district, procedure for establishment, 75-6538
 - adjustments and transactions after approval of unification, 75-6539
- Vacancy in office, circumstances creating, 75-5917
 - filling of position, 75-5918
- Visitations to schools, 75-5934

SCHOOLS

- Accreditation of schools, annual establishment and review, 75-7502
 - standards of accreditation, 75-7501
- Adult education program, establishment by district authorized, 75-7513
 - curriculum taught, 75-7513
 - definition, 75-7512
 - fund established for program, 75-7515
 - policies adopted by trustees, 75-7514
 - tuition and fees charged, 75-7516
- Ages when children admitted to school, 75-6302
 - compulsory attendance ages, 75-6303, 75-6304
- Alcohol abuse education, 75-8901 to 75-8905—See Drug and alcohol abuse, below
- Appeals in school matters
 - county superintendent, appeal to from trustees, 75-5811
 - state superintendent, appeals to, 75-5709
- Appropriation for private educational purposes prohibited, 1972 Const., V, 11
- Attendance at schools
 - ages when children eligible for admittance, 75-6302
 - compulsory attendance, 75-6303 to 75-6309—See Compulsory attendance, below
- Attendance outside district or county
 - elementary school pupils attending outside district
 - appeals from school officials' decisions, 75-6315

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

Attendance outside district or county (Continued)

elementary school pupils (Continued)

- discretionary approval by school officials, when permitted, 75-6314
- mandatory approval by school officials, circumstances requiring, 75-6313
- mileage factors, computation, 75-6315
- notice to parents of school officials' decision, 75-6315
- parents assuming responsibility for tuition, 75-6320
- report by host district at end of school term, 75-7202
- residence of child, basis for determination, 75-6315
- tuition rates, 75-7201

 budgeting, tax levy and payment of tuition, 75-7203

exceptional child requiring special education, 75-7808

 out-of-state attendance, 75-7809

 state institution, no tuition required for child attending, 75-7810

high school student attending outside county of residence, 75-6316

 approval of county superintendent and trustees required, 75-6316

 children's center pupils attending school in Twin Bridges, state payment for, 75-6319

 parents assuming responsibility for tuition, 75-6321

 reporting, budgeting and payment of tuition, 75-6317

interstate agreements for payment of tuition, 75-6318

Board of public education

 appointment of members, 1972 Const., X, 9; 75-5610 (1)

 combined boards as state board, 1972 Const., X, 9; 75-5615

 composition of board, 1972 Const., X, 9; 75-5610 (1)

 creation of board, 1972 Const., X, 9; 75-5609 (1)

 powers and duties, 1972 Const., X, 9; 75-5617 (1)

Bond issues for school purposes

 county high school bonds, 75-7133 to 75-7138—See County bond issues, below

 district bond issues, 75-7101 to 75-7132—See SCHOOL DISTRICTS AND TRUSTEES, Bond issues

Budget system, 75-6701 to 75-6730—See SCHOOL DISTRICTS AND TRUSTEES.

Budget system

Buildings and sites

 approval by electors required for purchase, building, exchange, acquisition or sale, 75-8204

 construction plans, approval required, 75-8206

 contract payments prohibited until plans approved, 75-8208

 review and approval by department of administration, 75-8206.1

 contracts for construction or repair to be advertised and let to lowest bidder, 75-8210

 department to set standards and approve plans for construction, 69-4117

 inspection and correction of conditions by department, 69-4118

 election on purchase, building, exchange, acquisition or sale of sites and buildings, 75-8204

 election on site selection, 75-8203

 flag displayed at school buildings, 75-5934

 health requirements for sites and buildings, 75-8207

 insurance on property, 75-8212

 lease of buildings for school purposes, 75-8209

 lease of school property for other purposes, 75-8211

 lighting requirements for buildings, 75-8207

 removal of buildings and improvements after abandonment for school purposes, 75-8202

 repossession by original owner after abandonment for school purposes, 75-8202

 sale or disposition of abandoned or unsuitable property, 75-8205

 selection of site, criteria and approval by electors, 75-8203

 space requirements for buildings, 75-8207

 state land sold or leased for school purposes, 75-8203

 trustees' responsibility for property, 75-8201

 ventilation required in buildings, 75-8207

Buses, 75-7001 to 75-7024—See Transportation of pupils, below

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

Closing of schools, 75-6607

Compulsory attendance

- ages when children compelled to attend, 75-6303
- handicapped children excused from attendance, 75-6303
 - report of case to welfare agency, 75-6308
- home study in lieu of attendance at school, 75-6303
- Indian children, attendance under tribal agreements, 75-6309
- indigent child not attending, report to welfare agencies, 75-6308
- judge of district court excusing from attendance, 75-6303
- officers to enforce attendance, appointment, 75-6305
 - powers and duties of attendance officers, 75-6306
 - proceedings to compel attendance, 75-6307
- private schooling in lieu of attendance in district, 75-6303
- prosecution of nonattendance cases, 75-6307
- suspended or expelled child excused from attendance, 75-6304
- temporary absence excused, 75-6304

Control of pupils by school authorities, 75-6310

- suspension or expulsion of pupil, 75-6311

Corporal punishment, administration by teacher, 75-6109

Correspondence study to meet special needs, 75-7510

County bond issues for high school purposes

- apportionment of bond proceeds among high schools in county, 75-7136
- budgeting prohibited for items covered by bond issue, 75-7138
- election on bond issue, 75-7135
- payment of bonds, 75-7137
- petition for bond election, 75-7134
- purposes for which bonds authorized, 75-7134
- schools to which bond issues available, 75-7133

County superintendents, 75-5801 to 75-5811—See COUNTY SUPERINTENDENT OF SCHOOLS

Curriculum

- conservation education, 75-7509
- drug and alcohol abuse education, 75-8901 to 75-8905—See Drug and alcohol abuse, below
- guide file, maintenance and availability to districts, 75-7505

Damage to school property by pupil, 75-6310

Day of instruction, number of hours required, 75-7403

- definition of terms, 75-7401

Days of instruction included in school year, 75-7402

- definition of terms, 75-7401
- post-secondary vocation-technical centers, 75-7711

Definition of terms used throughout title, 75-6601

- feminine included in masculine, 75-8301
- "pupil," 75-6301

Disciplinary measures against pupils, 75-6310

- suspension and expulsion, 75-6311
- teacher's power, 75-6109

Discrimination prohibited, 1972 Const., X, 7

Discriminatory practices in respect to admission unlawful, 64-306 (6)—See CIVIL RIGHTS, Discriminatory practices

District superintendent, employment, 75-6112

- duties of superintendent, 75-6113

Disturbance of school as misdemeanor, penalty, 75-8306

Driver education, 75-7901 to 75-7907—See Traffic education, below

Drug and alcohol abuse education

- consultation and advice by dependency commission, 75-8905
- purpose of requirement, 75-8901
- teacher preparation, 75-8902, 75-8903

Educational broadcasting, 75-9001 to 75-9004—See EDUCATIONAL RADIO AND TELEVISION

INDEX

References are to Title and Section numbers .

SCHOOLS (Continued)

- Elections in school matters, 75-6401 to 75-6423—See SCHOOL DISTRICTS AND TRUSTEES, Elections
- “Elementary school” defined, 75-6601
- Equality of opportunity guaranteed, 1972 Const., X, 1
- Equalization aid to schools
 - average number belonging, definition and calculation, 75-6902
 - increase in average number belonging, circumstances permitting, 75-6903, 75-6904
 - seventh and eighth grades, 75-6905.1
- county equalization aid
 - elementary school levy and revenues available, 75-6912
 - finances paid into fund, 75-8302
 - formulas for apportionment of moneys, 75-6915
 - high school levy and revenues available, 75-6913
 - quarterly apportionment to school districts, 75-6914
 - transportation and tuition costs deducted before apportionment, 75-6914
- foundation program, amount, 75-6906
 - maximum general fund without a voted levy, 75-6905
- interest and income moneys
 - amounts subject to distribution, 75-6907
 - definition of term, 75-6907
 - deposit in equalization aid fund, 75-6908
- isolated schools, financing, 75-6906
- joint district foundation program, proration and calculation, 75-6927
- maximum general fund budget without a voted levy, 75-6905
- purpose of foundation program and general fund, 75-6901
- special education programs, computation of aid adjusted for, 75-7813
 - preschool and adult education, aid to, 75-7816
- state equalization aid, 1972 Const., X, 1
 - additional levy for deficiencies, 75-6921
 - apportionment formula, 75-6919
 - board of public education duties, 75-6917
 - county tax levy to make up state deficiencies, 75-6921
 - definition of term, 75-6916
 - earmarked revenues available for aid, 75-6916
 - estimates of state aid for budgeting purposes, 75-6920
 - excess equalization funds, distribution, 75-6917.1
 - purpose of aid, 75-6917
 - superintendent of public instruction duties, 75-6918
- state impact aid, 75-6925
- state land equalization payments, purposes for which used, 81-1121
 - distribution within county, 81-1120
- Expulsion of pupil from school, 75-6311
- Extracurricular fund for pupil activities, establishment and accounting, 75-6323
- Federal funds, acceptance and administration, 75-7303
- Fees chargeable for use of equipment, 75-6322
- Financial administration and funds, 75-6801 to 75-6814—See SCHOOL DISTRICTS AND TRUSTEES, Financial administration
- Fines, reporting and payment into county equalization fund, 75-8302
- Fire safety
 - drills to be conducted regularly, 75-8308.1
 - alarm to be sounded on fire alarm system, 75-8308.4
 - number of drills required, 75-8308.2
 - recall signal to be distinct, control of signal, 75-8308.6
 - time of drills, 75-8308.3
 - fire department to be called for actual fire, 75-8308.5
 - inspection of exits by school authorities, 75-8308.7
- Fiscal year of schools, 75-7402
- Flag displayed at school building, 75-5934

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

- Food services program
 - commodities, acceptance from federal government and use, 75-8004
 - definition of terms, 75-8001
 - federal funds, acceptance and administration, 75-8002
 - federal impact funds, use for indigent pupils, 75-8006
 - fund, establishment and administration by district, 75-7211, 75-8005
 - records and reports, audit, inspection and review, 75-8003
 - state institutional schools, application to, 75-8007
 - trustees' duties, 75-8005
- Fraternalities, when prohibited, 75-6312
- Free public elementary and secondary schools, 1972 Const., X, 1
- Gifts for school purposes, acceptance and administration, 75-7309
- Goals of educational system, 1972 Const., X, 1
- Governor as ex officio member of boards of education, 1972 Const., X, 9
 - reports to governor, 1972 Const., VI, 15
- "High school" defined, 75-6601
- High school principal, employment for county high school, 75-6112
 - duties of principal, 75-6113, 75-6114
- Holidays and days of special observance, 75-7406, 75-7407
- Hours of school in day, minimum required, 75-7403
 - definition of terms, 75-7401
- Immunization against disease of newly enrolled children, powers of trustees, 75-5933
- Indians, cultural integrity to be preserved, 1972 Const., X, 1
 - declaration of state policy, 75-6129
 - studies in certain federally assisted schools, 75-6130 to 75-6132—See INDIANS
- Indian studies in certain federally assisted schools, 75-6130 to 75-6132—See INDIANS
- In-service training and individual consultations with department, 75-7506
- Interlocal co-operative agreements, laws governing, 75-7304
 - co-operating agency's duties, 75-7307
 - definition of terms, 75-7305
 - prime agency's functions, 75-7306
- Interstate agreements for joint school facilities, 75-7308
- Isolated school, approval and establishment, 75-6608
- "Junior high school" defined, 75-6601
- Kindergarten programs, establishment, 75-7507
- Laboratory fees chargeable, 75-6322
- Legislative duties in regard to educational goals, 1972 Const., X, 1
- Library required in each school, 75-7517
 - policies adopted by trustees, 75-7518
 - public use of libraries, 75-7518
 - reports to state officials on library, 75-7520
 - sectarian publications prohibited, 75-7521
 - selection of books for library, 75-7519
 - standards required, 75-7517
- "Middle school" defined, 75-6601
 - opening of middle school, 75-6609
- Music instruction from private teachers, school credit for, 75-7508
- Opening and reopening of schools
 - elementary school, 75-6602
 - high school, 75-6603
 - junior high school, 75-6604
 - joint board of trustees operating county high school, establishment by, 75-6605, 75-6606
 - middle school, 75-6609
 - "middle school" defined, 75-6601
- Penalty for violations not otherwise covered, 75-8307
- Physician or nurse retained by school district, 75-5934
- Post-secondary educational institutions and agents, licensing and regulation, 75-9201 to 75-9223—See POST-SECONDARY EDUCATIONAL INSTITUTIONS

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

- Post-secondary vocational-technical centers
 - administration of centers by local board, 75-7710
 - application for designation, contents and presentation, 75-7707
 - budgeting and program categories, 75-7708
 - conflict of laws, resolving, 75-7710
 - days of school in year, 75-7711
 - definition of terms, 75-7701
 - designation by legislative direction, 75-7707
 - eligibility for admission as pupil, 75-7712
 - existing centers recognized, 75-7707
 - fees for use of equipment and material, 75-7714
 - financing of centers, 75-7709
 - residents of state given priority in admission, 75-7712
 - tuition not charged, 75-7713
 - state buildings and land, lease or transfer to district operating center, 75-7715
 - taxable property valuation required for designation, 75-7707
 - tax levy for support of centers, 75-7709
 - tuition charges to nonresidents, 75-7713
- Prayer in schools, 75-7521
- Preschool programs, establishment, 75-7507
- Principal of county high school, employment, 75-6112
 - duties of principal, 75-6113, 75-6114
- Privileged communications between counselor, psychologist, nurse, or teacher and student, 93-701-4
- Property of school, trustees' power over, 75-8201
 - tax exemption, 1972 Const., VIII, 5
- Public school fund of state
 - apportionment of interest and income, 1972 Const., X, 5
 - guarantee by state, 1972 Const., X, 3
 - investment, 1972 Const., VIII, 13; 81-1001
 - sources, 1972 Const., X, 2; 75-7301
- Records, destruction when old and worthless, 59-514
 - fiscal records, destruction after period of years, 59-516
- Religion
 - aid to sectarian schools prohibited, exception, 1972 Const., X, 6
 - appropriation for private educational purposes prohibited, 1972 Const., V, 11
 - instruction prohibited, 75-7521
 - nondiscrimination in education, 1972 Const., X, 7
 - prayer in schools, 75-7521
- Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
- Safety patrols, organization and operation, 75-8310
 - drivers to honor stop signs and permit movement of children, 32-2177
- Saturday instruction prohibited, exceptions, 75-7404
 - definition of terms, 75-7401
- Secret organizations prohibited, 75-6312
- Sectarian instruction prohibited, 75-7521
- Sectarian schools
 - aid prohibited, exception, 1972 Const., X, 6
 - appropriation for private educational purposes prohibited, 1972 Const., V, 11
- Severability of provisions, 75-8311
- Special education for exceptional children
 - annual accounting of expenditures for special education, 75-7813.1
 - approval of program by superintendent of public instruction required, 75-7811
 - attendance of child outside district or county
 - out-of-state attendance, tuition arrangements, 75-7809
 - state institution providing training, no tuition paid, 75-7810
 - tuition paid to another district conducting program, 75-7808
 - co-operation by state agencies, 75-7804
 - definition of terms, 75-7801
 - equalization aid adjustments for programs, 75-7813
 - pre-school and adult programs, assistance for, 75-7816

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

- Special education for exceptional children (Continued)
 - exclusion of child from program, valid reasons for, 75-7812
 - maximum-budget-without-a-vote, allowable costs schedule, 75-7813.1
 - multi-district programs, establishment on petition, 75-7807
 - number of children required to establish program
 - discretionary establishment, 75-7806
 - mandatory establishment, 75-7805
 - petition by parents for establishment of program, 75-7807
 - policies adopted by board of education, 75-7802
 - preschool and adult programs, assistance for, 75-7816
 - superintendent's duties in supervision and co-ordination, 75-7803
 - transportation to be provided for exceptional child, 75-7814
 - preschool and adult education, state transportation assistance for, 75-7816
 - state reimbursement for transportation, 75-7815
 - State board of education
 - composition of board, 1972 Const., X, 9; 75-5609 (3)
 - powers and duties, 1972 Const., X, 9; 75-5615, 75-5617 (3)
 - State school lands
 - apportionment of income to school districts, 1972 Const., X, 5
 - board of land commissioners, 1972 Const., X, 4
 - disposition of public land trust, 1972 Const., X, 11
 - public school fund, proceeds from lands part of, 1972 Const., X, 2
 - Sunday, conduct of school on prohibited, 75-7404
 - definition of terms, 75-7401
 - Surplus property, 82-3101 to 82-3106—See STATE AGENCY FOR SURPLUS
- ### PROPERTY
- Suspension of pupil from school, 75-6311
 - procedure for suspension, 75-6109
 - Tax levies for support of schools
 - additional levy approved by electors for special purposes, 75-6923
 - adult education fund levy, 75-7207
 - budget as basis for district levy, 75-6717
 - building reserve fund, levy for, 75-7206
 - computation of general fund net levy, 75-6926
 - county equalization levy for elementary schools, 75-6912
 - county equalization levy for high schools, 75-6913
 - debt service fund levy, 75-7128
 - nonoperating fund levy, 75-7210
 - permissive district levy to supplement foundation program, 75-6922
 - post-secondary vocational-technical center, levy for, 75-7709
 - retirement fund contributions, levy for, 75-7204
 - state aid deficiencies, levies to make up, 75-6921
 - transportation levies, 75-7021
 - tuition for elementary pupils, levy for, 75-7203
- ### Teachers
- abuse of pupils as misdemeanor, 75-6109
 - abuse of teachers as misdemeanor, 75-6110
 - annual reports on attendance by pupils, 75-6108
 - certification required to teach in public schools, 75-6001
 - alien teacher, provisional certification, 75-6005
 - appeal to board of education from denial, suspension or revocation of certificate, 75-6010
 - classes of certificates, 75-6006
 - duration of certificates, 75-6008
 - emergency authorization of employment of uncertified persons, 76-6011
 - exchange teacher, annual certification, 75-6005
 - fees for certificates, 75-6009
 - issuance of certificates by state superintendent, 75-6003
 - oath required of teachers, 75-6004
 - policies for certification adopted by state board, 75-6002
 - previously issued certificates continued in effect, 75-6007
 - qualifications for certification, 75-6004

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

Teachers (Continued)

certification required (Continued)

- registration of certificate with county superintendent, 75-6106
- renewal of certificates, 75-6008
- student teachers, certification not required, 75-6001
- suspension and revocation of certificates, 75-6010

child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS,
Abuse of children

conferences and conventions during school year, 75-7405

days of teaching in week, 75-6102

definition of terms used throughout title, 75-6101

discipline of pupils, 75-6109

dismissal of teacher under contract, grounds and procedure, 75-6107

duties of teacher in general, 75-6108

employment of teachers

contract required, 75-6102

dismissal of teacher, grounds and procedure, 75-6107

nontenure teachers, notice of re-election or termination, 75-6105.1

tenure of teachers, 75-6103 to 75-6105

written acceptance required of nontenure teachers, 75-6105.1

exchange teachers, certification, 75-6005

force used to restrain or correct pupil, justification, 94-3-107

holidays to be allowed, 75-6102

in-service training and individual consultation, 75-7506

institutes during school year, 75-7405

joint board, employment of teacher by, 75-6102

oath required of teachers, 75-6004

pupils, authority of teachers over, 75-6109

retirement system

benefits payable on retirement or death, 75-6208

exemption from taxation, execution and assignment, 75-6215

board continued in department of administration, 82A-212

continuation of 1937 system, 75-6202

contributions by employers to pension accumulation fund, 75-6207

budgeting and tax levy for contributions, 75-7204

contributions by teachers in addition to required deductions, 75-6207

corporate powers of system, 75-6202

correction and adjustment of errors, 75-6217

deductions from teachers' salaries, computation and payment to board, 75-6207

definition of terms, 75-6201

dormant accounts, transfer to pension accumulation fund, 75-6206

employer's duties under system, 75-6214

expense fund, sources and disbursements, 75-6207

former retirement system discontinued, 75-6218

service credit for prior service, 75-6213

fraudulent statement or records as misdemeanor, 75-6217

funds in which assets of system held, 75-6207

guaranty of interest, maintenance of reserves and payment of benefits, 75-6216

interest rate, establishment and apportionment, 75-6206

investment of funds, 75-6206

membership in system, eligibility for, 75-6209

application for membership, 75-6212

inactive membership, 75-6210

termination of membership, 75-6211

name of system, 75-6202

ratification of prior board action and rights under system, 75-6202

reserve funds for benefits payable, 75-6207

retirement board, existence and composition, appointment, terms, qualifications and oaths of members, 82A-212

administration of system funds, 75-6206, 75-6207

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

Teachers (Continued)

- retirement system (Continued)
 - retirement board (Continued)
 - allocated to department for administrative purposes, personnel hiring function retained, 82A-212
 - per diem and expenses of members, 75-6204
 - powers and duties of board, 75-6205
 - service creditable to members, 75-6212
 - out-of-state employment credit, 75-6213
 - service prior to establishment of system, 75-6213
 - tax-deferred annuity program, individual accounts to be established, 75-6219
 - treasurer as custodian of funds, 75-6206
 - withdrawal of contributions by inactive member, 75-6208
- state teachers' association annual sessions, attendance, 75-6111
- student teachers exempt from certification, rights and duties, 75-6001
- tenure of teacher after four years, 75-6103
 - nontenure teachers, notification of re-election or termination, 75-6105.1
 - re-employment of tenure teacher, notice required, 75-6105
 - termination of tenure teacher, notice and hearing required, 75-6104
 - employment of attorney by superintendent authorized, 75-6104

Technical education, 75-7707 to 75-7715—See Post-secondary vocational-technical centers, above

Textbooks

- bribery in selection of books, penalties for, 75-7610
- dealers in textbooks
 - agreements required for license, 75-7605
 - bond required of dealers, 75-7605
 - bribery by dealer, penalties, 75-7610
 - complaints against dealers, notice and action on, 75-7607
 - issuance of license, 75-7605
 - license required of dealer, 75-7605
 - penalty for unlicensed business, 75-7608
 - purchase from licensed dealer required, 75-7604
 - restriction of competition by dealer, actions on, 75-7609
- definition of terms, 75-7601
- free textbooks to be provided by district, 75-7602
- prices at which books to be offered, 75-7605
- purchase from licensed dealer required, 75-7604
- restriction of competition, actions on, 75-7609
- sale of books on request by parent, 75-7602
- sample textbooks furnished to school officials, 75-7610
- selection and adoption of textbooks by local officials, 75-7603

Traffic education

- account established in state treasury, 75-7902
- administrative costs deducted from traffic education account, 75-7906
- definition of terms, 75-7901
- distribution of moneys to districts conducting programs, 75-7906
- district programs, establishment, 75-7905
- eligibility of students for courses, 75-7905
- fines and bail forfeitures paid into account, 75-7902
 - transmittal to treasurer by courts, 75-7903
- license fees, portions paid into account, 75-7902
- license, issuance after completion of course, 31-127
- safety patrols, organization and operation, 75-8310
- superintendent of public instruction's duties with respect to program, 75-7904
- time of giving courses, 75-7905

Transportation of pupils

- appeals in transportation matters, 75-7015
- areas for transportation service within county, establishment, 75-7015
- budgeting for transportation, 75-7020

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

Transportation of pupils (Continued)

buses used for transportation

- budgeting for purchase, rental and operation, 75-7020

- definition of "school bus," 75-7002

- depreciation reserve for replacement of buses and equipment, 75-7024

- drivers' qualifications, 75-7003

- flashing lights required, 32-21-132

- use of lights, 32-2197

- insurance on school bus operation, 75-7011

- markings required on buses, 75-7002

- purchase of buses by school district, 75-7011

- radio equipment for buses, 75-7011

- railroad, procedure when crossing, 75-7007

- rental of bus by school district, 75-7011

- standards and criteria prescribed by board of public education, 75-7004

- stopping required for school bus, 75-7007

- charges for discretionary transportation furnished by district, 75-7009

- contracts for transportation of children authorized, 75-7011

- advertising for bids and award to lowest responsible bidder, 75-7013

- forwarding of contracts to county superintendent, 75-7020

- payments by district, contract and performance required, 75-7013

- procedure for execution of contracts, 75-7012

- time of awarding contracts, 75-7012

- county transportation committee, membership and organization, 75-7014

- duties of committee, 75-7015

- definition of terms, 75-7001

- eligibility for transportation, 75-7001

- discretion of trustees to provide transportation to pupil not otherwise eligible, 75-7009

- private school pupils, 75-7010

- hearings and appeals on transportation matters, 75-7015

- individual transportation, contracts for, 75-7012

- maximum length of trip for elementary pupil, 75-7008

- mileage distances, determination, 75-7017

- parent or guardian providing own transportation, 75-7008

- policies and standards established by board of education, 75-7004

- private and parochial school children, transportation furnished to, 75-7010

- residence of pupil, determination, 75-7016

- revenue estimates for transportation budget, 75-7021

- special education programs, transportation provided for, 75-7814

- preschool and adult education, aid to, 75-7816

- state reimbursement for transportation, 75-7815

- state and county aid to transportation

- bus transportation, maximum rates of reimbursement, 75-7018

- county reimbursement to districts, 75-7023

- individual transportation, maximum rates for reimbursement, 75-7019

- state reimbursement to districts, 75-7022

- superintendent of public instruction's duties with respect to transportation, 75-7005

- tax levies for transportation, computation and reporting, 75-7021

- trustees to provide transportation to eligible pupils, 75-7008

- discretionary transportation of ineligible pupils, 75-7009

- violation of law, removal from office or cancellation of contract, 75-7006

- Truancy prosecutions, 75-6307

- Types of schools defined, 75-6601

- Visitation of schools by trustees, 75-5934

- Visual, aural and other media, library maintained by superintendent, 75-7511

Vocational education

- board of education duties as board for vocational education, 75-7702

- definition of terms, 75-7701

- districts authorized to establish programs, 75-7704

INDEX

References are to Title and Section numbers

SCHOOLS (Continued)

Vocational education (Continued)

federal act, acceptance, 75-7705

moneys received, deposit and disbursement, 75-7706

post-secondary vocational-technical centers, 75-7707 to 75-7715 — See Post-secondary vocational-technical centers, above

superintendent's duties as executive officer of board, 75-7703

treasurer as custodian of vocational education moneys, 75-7706

university unit authorized to establish programs, 75-7704

Year, number of school days in, 75-7402

definition of terms, 75-7401

post-secondary vocational-technical centers, 75-7711

SEARCH AND SEIZURE

Admissibility of articles or things seized as evidence in other proceedings, 95-718

Arrest, search and seizure authorized as incident to, 95-701

Authority to make search and seizure, 95-701

Consent of accused or other person, search and seizure authorized, 95-701

Constitutional prohibition against unreasonable searches and seizures, 1972 Const., II, 11

Gambling apparatus seized by officer making arrest, destruction, 94-8-410, 94-8-411

Illegally seized evidence, motion to suppress, 95-1806

Inspections granted by law, searches and seizures authorized, 95-701

Legality, when search and seizure not illegal, 95-717

Motion to suppress evidence illegally seized, 95-1806

Property or things seized

admissibility in other proceedings, 95-718

custody and disposition of things seized under warrant, 95-713

custody and disposition of things seized without warrant, 95-714

return of property seized, 95-715

return to court of things seized under warrant, 95-712

unclaimed property, disposition of, 95-716

Warrant

application, filing of, 95-706

definition, 95-703

detention and search of persons on premises, 95-710

execution, procedure, use of force, 95-708, 95-709

grounds for search warrant, 1972 Const., II, 11; 95-704

limitation on time when warrant may be executed, 95-711

scope of search, 95-705

search and seizure authorized by authority of, 95-701

service, by whom served, procedure, 95-707, 95-708

time warrant may be executed, 95-711

Without warrant, scope of search, 95-702

custody and disposition of things seized, 95-714

return of property seized, 95-715

SEAT OF GOVERNMENT

Executive officers to reside at seat of government, 1972 Const., VI, 1

Helena as seat of government except during emergency, 1972 Const., III, 2

SECONDHAND DEALERS

Receiving or purchasing goods from child as criminal offense, punishment, 94-5-609

(1) (c)

SECRETARY OF STATE

Board of land commissioners, member of, 1972 Const., X, 4

Business corporations, powers and duties relating to—See BUSINESS CORPORATION ACT, Secretary of state

Business trusts—See BUSINESS TRUSTS, Secretary of state

Candidacy for public office during term authorized, 1972 Const., VI, 5

Canvassers' board transferred to secretary's office, 82A-2102

Duties, 1972 Const., VI, 4

Election, 1972 Const., VI, 2

INDEX

References are to Title and Section numbers

SECRETARY OF STATE (Continued)

Executive branch, member of, 1972 Const., VI, 1

Fees collectible, 25-102

co-operative associations, 14-201, 14-204

co-operative marketing associations, 14-422

rural electric and telephone cooperatives, 14-527

water users' association articles, filing and recording, 25-110

Impeachment, subject to, 1972 Const., V, 13

Inability to discharge powers and duties of office, legislative declaration of vacancy, 59-609

Lobbyist, duties concerning—See LOBBYING

Machine gun registration, duties, 94-8-208

Nonprofit corporations, powers and duties relating to—See NONPROFIT CORPORATION ACT, Secretary of state

Oath of office, 1972 Const., III, 3

Other government employment prohibited during term, 1972 Const., VI, 5

Qualifications, 1972 Const., VI, 3

Religious corporation sole

articles of incorporation, filing with secretary of state, 15-2404

certificate of incorporation, issuance by secretary of state, effect, 15-2405

Residence at seat of government required, 1972 Const., VI, 1

Rosters prepared from election records, 43-206.1

Salary, 1972 Const., VI, 5; 25-501

Service of process on secretary of state as agent, M. R. Civ. P., Rule 4D(6)

Term of office, 1972 Const., VI, 1

Vacancy in office, how filled, 1972 Const., VI, 6

SECURED TRANSACTIONS

Acceleration of performance, good faith required in exercising option, 87A-1-208

Accessions to property, conflicting security interest in, 87A-9-314

Accounts sold as part of business, exclusion from chapter, 87A-9-104

After-acquired collateral

new value, when considered to have been given by secured party, 87A-9-108

time of attachment of security interest to, 87A-9-204

Agreement for security interest

contents required, 87A-9-203

effect of agreement against parties, purchasers and creditors, 87A-9-201

required for enforceability of security interest, 87A-9-203

Agreement to subordinate prior interest, 87A-9-316

Antecedent debt secured by after-acquired collateral, when debt secured not considered antecedent, 87A-9-108

Assignment of collateral for benefit of creditors of debtor—See Lien adverse to security interest, below

Assignment of security interest, filing not required to continue perfected interest, 87A-9-302

Attachment of collateral by third party—See Lien adverse to security interest, below

Attachment of security interest, requirements for, 87A-9-204

Authenticity of third-party documents presumed, 87A-1-202

Bank accounts excluded from chapter, 87A-9-104

Bankruptcy of debtor, status of trustee—See Lien adverse to security interest, below

Bulk Transfer chapter, secured transactions not subject to, 87A-6-103, 87A-9-111

Care required by secured party in possession of collateral, 87A-9-207

Certificate of title indicating security interest, conflict of laws, 87A-9-103

Citation of Uniform Commercial Code chapter, 87A-9-101

Claim against seller or lessor, waiver by buyer or lessee against assignee, 87A-9-206

Claims of account debtor against creditor, assertion against assignee of account, 87A-9-318

Collateral to secure debt

after-acquired collateral, time of attachment to, 87A-9-204

list of collateral supplied by secured party to debtor, 87A-9-208

owner of collateral other than debtor, rights and immunities, 87A-9-112

possession of collateral by secured party, rights and duties of parties, 87A-9-207

proceeds of disposition of collateral, attachment of security interest to, 87A-9-306

INDEX

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)

Collateral to secure debt (Continued)

- release of collateral, filing, 87A-9-406
- title immaterial in applying chapter, 87A-9-202
- transfer of debtor's rights in collateral, 87A-9-311
- use of collateral by debtor, effect of agreements permitting, 87A-9-205
- use of collateral by secured party in possession, 87A-9-207
- Collection, assignment of accounts for excluded from chapter, 87A-9-104
- Collection of assigned accounts by debtor, effect of agreement permitting, 87A-9-205
- Commercial Paper chapter subject to Secured Transactions chapter, 87A-3-103
- Commingled goods, conflicting security interest in, 87A-9-315
- Commingling of collateral by debtor, effect of agreements permitting, 87A-9-205
- Conflict of laws, 87A-9-103
 - restriction on agreement as to applicable law, 87A-1-105
- Consumer Loan Act, application to transactions, 87A-9-203
- Course of dealing between parties, application, 87A-1-205
- Creditors, effect of security agreement against, 87A-9-201
- Default by debtor
 - attorney fee to be allowed in foreclosure action, 93-8613
 - collection on accounts or instruments by secured party, 87A-9-502
 - deficiency in collateral, liability of debtor, 87A-9-504
 - collections on accounts or instruments by secured party, 87A-9-502
 - disposition of collateral by secured party, 87A-9-504
 - compulsory disposition, 87A-9-505
 - price at which sale made, reasonableness, 87A-9-507
 - judgment for secured party, relation back of judgment lien, 87A-9-501
 - liability of secured party for noncompliance with requirements, 87A-9-507
 - possession of collateral taken by secured party, 87A-9-503
 - purchase by secured party at sale of collateral, 87A-9-504
 - real property included in security agreement, remedies available, 87A-9-501
 - redemption by debtor after default, 87A-9-506
 - remedies available to debtor, 87A-9-501
 - remedies available to secured party, 87A-9-501
 - retention of collateral by secured party in satisfaction of debt, 87A-9-505
 - sale of collateral by secured party, 87A-9-504
 - compulsory sale, 87A-9-505
 - judicial sale, right of secured party to purchase at, 87A-9-501
 - postponement of sale, 52-313
 - price at which sale made, reasonableness, 87A-9-507
 - report of sale, filing and recording, 52-314
 - sheriff making seizure and sale, 52-312
 - time of sale, 52-313
 - subrogation of guarantor or endorser to rights of secured party, 87A-9-504
 - surplus proceeds of collateral, disposition, 87A-9-504
 - collections on accounts or instruments by secured party, 87A-9-502
 - waiver of certain rights of debtor prohibited, 87A-9-501
- Defenses against seller or lessor, waiver by buyer or lessee against assignee, 87A-9-206
- Defenses available to account debtor against assignee of account, 87A-9-318
- Definition of terms, 87A-9-105
 - "account," 87A-9-106
 - "consumer goods," 87A-9-109
 - "contract right," 87A-9-106
 - "equipment," 87A-9-109
 - "farm products," 87A-9-109
 - general definitions in Uniform Commercial Code, 87A-1-201
 - "general intangibles," 87A-9-106
 - index of definitions, 87A-9-105
 - "inventory," 87A-9-109
 - "purchase money security interest," 87A-9-107
- Description of property, sufficiency, 87A-9-110
- Disposal of collateral by debtor, waiver by buyer or lessee against assignee, 87A-9-205
- Effectiveness of security agreement among parties, 87A-9-201
- Exclusion of transactions from chapter, 87A-9-104

INDEX

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)

Federally governed security interests excluded from chapter, 87A-9-104

Filing of financing statement

acts constituting filing, 87A-9-403

amendments to statement, effective date, 87A-9-402

assignment of security interest or rights under financing statement, 87A-9-405
filing not required to continue perfected status, 87A-9-302

change of debtor's address or location of collateral, effect, 87A-9-401

conflict of laws, 87A-9-103

contents of statement required, 87A-9-402

continuation statements, manner of filing and effect, 87A-9-403

destruction of record permitted after lapse of time, 59-516.1

duration of effectiveness of filing, 87A-9-403

erroneous filing in improper place, effect, 87A-9-401

fees chargeable for filing, 87A-9-403

assignment of security interest, filing, 87A-9-405

information, fees chargeable for furnishing, 87A-9-407

release of collateral, filing, 87A-9-406

termination statement, 87A-9-404

formal requisites of statement, 87A-9-402

future goods, application of financing statement to, 87A-9-402

indexing of statements, 87A-9-403

information furnished from files, 87A-9-407

lapse of security interest on expiration of period for which filing effective, 87A 9
403

numbering of statement, 87A-9-403

out-of-state transactions filed in this state, 87A-9-103

period for which retained, 59-516.1

place of filing, 87A-9-401

public inspection, statement held for, 87A-9-403

public utility statement, contents and place of filing, 87A-9-302.2

definition of terms, 87A-9-302.1

Uniform Commercial Code applicable, 87A-9-302.3

purchase money security interest, time allowed for filing, 87A-9-301

release of collateral, filing, 87A-9-406

required for perfection of security interest, exceptions, 87A-9-302

signature affixed to statement, 87A-9-402

statutory registration systems, interests in property subject to, 87A-9-302

termination statement, furnishing and filing, 87A-9-404

Fixtures, priority of security interest in, 87A-9-313

Foreclosure of security interest

joinder with action for recovery of possession, 52-312

proceedings as in foreclosure of real estate mortgage, 52-312

seizure and sale by sheriff

authority in security agreement for seizure, 52-312

indemnity bond to sheriff given by secured party, 52-312

postponement of sale, 52-313

report of sale, filing and recording, 52-314

time of sale, 52-313

Future advances, coverage by security agreement, 87A-9-204

Good faith required, 87A-1-203

Illegal transactions not validated by chapter, 87A-9-201

Insolvency of debtor, attachment of security interest to proceeds of disposition of col
lateral, 87A-9-306

Installment sales act unaffected by chapter, 87A-9-201

Insurance policy interest, transfer excluded from chapter, 87A-9-104

Judgment rights excluded from chapter, 87A-9-104

Landlord's lien excluded from chapter, 87A-9-104

Lien adverse to security interest

attachment of collateral by third party, method of levy, 93-4338

priority over security interest of liens in ordinary course of business, 87A-9-310

subordination of unperfected security interest to prior lien, 87A-9-301

Livestock as collateral, 52-319 to 52-323, 87A-9-203

collection of debt, officers not responsible for, 52-323

INDEX

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)

- Livestock as collateral (Continued)
 - contents of notices filed, 52-320
 - fees chargeable for filing, disposition, 52-322
 - filing with department of livestock, 52-319
 - satisfaction of agreement, duty to file, 52-321
- Manufactured products, security interest in material attaching to, 87A-9-315
- Mechanic's and materialman's lien excluded from chapter, 87A-9-104
- Modification of contract after assignment of account receivable, effect as against assignee, 87A-9-318
- Motor vehicles, security interest in, 53-110
- Negotiable instrument signed by buyer with security agreement, effect, 87A-9-206
- Notification to account debtor of assignment of account receivable, 87A-9-318
- Pawnbroker law, application to transactions, 87A-9-203
- Perfection of security interest
 - bailed goods, perfection of interest in, 87A-9-304
 - chattel paper, means of perfection, 87A-9-304
 - continuity of perfected status under different means of perfection, 87A-9-303
 - filing necessary to perfect interest, 87A-9-302—See also Filing of financing statement, above
 - instruments, security interest in, 87A-9-304
 - negotiable documents, interest in, 87A-9-304
 - possession by secured party as means of perfection, 87A-9-305
 - priority between interests governed by time of perfection, 87A-9-312
 - purchase money security interest, time allowed for filing, 87A-9-301
 - statutory registration systems, property subject to, 87A-9-302
 - time of perfection, 87A-9-303
- Possession of collateral by secured party, rights and duties of parties, 87A-9-207
 - perfection of security interest by possession, 87A-9-305
 - security interest supported by possession, 87A-9-203
- Preservation of collateral by secured party in possession, 87A-9-207
- Priorities among conflicting security interests in same collateral, 87A-9-312
 - fixtures, 87A-9-313
- Proceeds of disposition of collateral, attachment of security interest to, 87A-9-306
- Processed goods, security interest in, 87A-9-315
- Purchase money security interest governed by chapter on sales, 87A-9-206
 - priority as against other security interests, 87A-9-312
 - time allowed for filing of financing statement, 87A-9-301
- Purchaser of collateral, effect of security agreement against, 87A-9-201
 - chattel paper purchaser, priority as against security interest, 87A-9-308
 - consumer goods purchaser taking free of security interest, 87A-9-307
 - farm equipment purchaser taking free of security interest, 87A-9-307
 - negotiable instrument or document, rights of holder in due course against security interest, 87A-9-309
 - nonnegotiable instrument purchaser, priority as against perfected security interest, 87A-9-308
 - ordinary course of business buyer taking free of security interest, 87A-9-307
- Railway rolling stock equipment trusts excluded from chapter, 87A-9-104
- Raw material, security interest attaching to finished product, 87A-9-315
- Real estate interests excluded from chapter, 87A-9-104
- Real property included in security agreement, remedies available on default of debtor, 87A-9-501
- Redemption of collateral by debtor after default, 87A-9-506
- Repossession of goods by seller of account receivable, attachment of account buyer's interest to goods, 87A-9-306
- Reservation of rights by party while performing or accepting performance, 87A-1-207
- Retail Installment Sales Act, application to transactions, 87A-9-203
- Sale of goods, application of chapter to security interest arising under, 87A-9-113
- Sales chapter inapplicable to transactions, 87A-2-102
- Scope of Uniform Commercial Code chapter, 87A-9-102
- Setoff rights excluded from chapter, 87A-9-104
- Short title of Uniform Commercial Code chapter, 87A-8-101
- Small loans laws unaffected by Secured Transactions chapter, 87A-9-201

INDEX

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)

Statement of account by secured party to debtor, 87A-9-208
Statutory liens, chapter inapplicable, 87A-9-102
Subordination of priority by agreement, 87A-9-315
Subordination of unperfected security interest to prior lien, 87A-9-301
Threat or deception causing execution of pecuniary obligation document as deceptive practice, punishment, 94-6-307
Time allowed for required actions, 87A-1-204
Time of attachment of security interest, 87A-9-204
Title to collateral immaterial in applying chapter, 87A-9-202
Tort claims excluded from chapter, 87A-9-104
Transfer of debtor's rights in collateral, 87A-9-311
Usage of trade, application, 87A-1-205
Use of collateral by debtor, effect of agreements permitting, 87A-9-205
 secured party not liable for debtor's acts or omission in use, 87A-9-317
Use of collateral by secured party in possession, 87A-9-207
Usury laws unaffected by chapter, 87A-9-201
Wage assignments excluded from chapter, 87A-9-104
Waiver of certain rights of debtor prohibited, 87A-9-501
Warehouseman reserving security interest in goods covered by warehouse receipt, 87A-7-209

SECURITIES REGISTRATION

See also INVESTMENT SECURITIES, 87A-8-101 to 87A-8-406
Accountant excluded from definition of "investment adviser," 15-2004
Annuity contracts excluded from definition of "security," 15-2004
Attorneys excluded from definition of "investment adviser," 15-2004
Bank securities exempt, 15-2013
Banks excluded from definition of "investment adviser," 15-2004
Bonds included in definition of "security," 15-2004
Bonuses construed as sales, 15-2004
Broker-dealers
 definition, 15-2004
 federally registered exempt securities, payment of commission authorized, 15-2014
 (8)
 fees payable for registration, 15-2016
 records and accounts required, 15-2006
 registration required, procedure, 15-2006
 service of process on dealer, 15-2015
 suspension or revocation of registration, 15-2006
Building and loan securities exempt, 15-2013
Burden of proof as to exemption, 15-2025
Carrier securities, when exempt from registration, 15-2013
Certificates of deposit included in definition of "security," 15-2004
Citation of act, 15-2002
Civil liability for unlawful acts and practices, 15-2022
Collateral-trust certificates included in definition of "security," 15-2004
"Commissioner" defined, 15-2004
Co-ordination, registration by
 contents and filing of statement, 15-2009
 stop order on failure to file price amendment, 15-2009
 time registration effective, 15-2009
Copies of documents filed, availability to public, 15-2024
Criminal liability, 15-2021
Damages, measure of civil liability, 15-2022
Debentures included in definition of "security," 15-2004
Definition of terms, 15-2004
Denial of registration, grounds and procedure, 15-2012
Effect of registration, 15-2011
Employee benefit plans, exemption of investment contracts in connection with, 15-2013
Engineers, exclusion from definition of "investment adviser," 15-2004
Escrow deposits of securities to be issued to promoters, 15-2011
Evidences of indebtedness included in definition of "security," 15-2004
Exchange-listed securities, exemption, 15-2013

INDEX

References are to Title and Section numbers

SECURITIES REGISTRATION (Continued)

- Exempt securities, 15-2013
- Exempt transactions, 15-2014
- Expenses of investigation, payment by issuer or broker-dealer, 15-2024
- False and misleading statements filed unlawful, 15-2017
- Federal statutes defined, 15-2004
- Fees payable for registration and certificates, 15-2016
 - disposition of moneys received, 15-2024
- Forms prescribed by commissioner, 15-2024
- Fraudulent practices prohibited, 15-2005
- Gift of assessable stock construed as offer and sale, 15-2004
- Good faith conformity exempt from liability, 15-2004
- Governmental securities exempt, 15-2013
- "Guaranteed" defined, 15-2004
- Impounding of proceeds of sale, 15-2011
- Incorporation of documents by reference in registration statement, 15-2011
- Information confidential, 15-2024
- Injunction against unlawful acts and practices, 15-2020
- Insurance companies excluded from definition of "investment adviser," 15-2004
- Insurance policies excluded from definition of "security," 15-2004
- Insurance policies exempt, 15-2013
- Investigation by investment commissioner, 15-2019
- Investment advisers
 - assignment of contract, consent required, 15-2005
 - compensation of adviser, prohibited provisions, 15-2005
 - contracts, required provisions, 15-2005
 - definition, 15-2004
 - fees payable for registration, 15-2016
 - partnership changes, notice required, 15-2005
 - records and accounts required, 15-2006
 - registration required, procedure, 15-2006
 - service of process on adviser, 15-2015
 - suspension or revocation of registration, 15-2006
- Investment commissioner
 - administration of act, 15-2024
 - enforcement powers, 15-2019, 15-2020
 - office created, 15-2001
- Investment contract included in definition of "security," 15-2004
- Isolated transactions, exemption, 15-2014
- "Issuer" defined, 15-2004
- Joint liability for damage from unlawful practices, 15-2022
- Judicial sales, exemption, 15-2014
- Methods of registration enumerated, 15-2007
- Mining interests included in definition of "security," 15-2004
- Misleading statements as to effect of registration unlawful, 15-2018
- "Non-issuer" defined, 15-2004
- Non-issuer transaction, when exempt, 15-2014
 - revocation of exemption by commissioner, notice, hearing, 15-2014
- Non-profit corporations, exemption of securities, 15-2013
- Notes included in definition of "security," 15-2004
- Notification, registration by
 - contents and filing of statement, 15-2008
 - eligibility of securities for registration by notification, 15-2008
 - time of effectiveness of registration, 15-2008
- "Offer" defined, 15-2004
- Oil and gas interests included in definition of "security," 15-2004
- Participation certificates included in definition of "security," 15-2004
- Penalties for violation, 15-2021
- "Person" defined, 15-2004
- Pledgee, exemption of sales by, 15-2014
- Pre-organization certificates and subscriptions included in definition of "security," 15-2004
- Private offerings, exemption, 15-2014

INDEX

References are to Title and Section numbers

SECURITIES REGISTRATION (Continued)

- Profit-sharing agreements, certificates included in definition of "security," 15-2004
- Public hearings required, 15-2024
- Public utility securities, when exempt, 15-2013
- Publishers excluded from definition of "investment adviser," 15-2004
- Qualification, registration by
 - contents and filing of statement, 15-2010
 - prospectus, required contents, 15-2010
 - time registration effective, 15-2010
- Register of applications and statements open for inspection, 15-2024
- Reorganization issues, exemption, 15-2014
- Reports to be filed with commissioner after registration of securities, 15-2011
- Review of orders of commissioner, 15-2023
- Revocation of registration, grounds and procedure, 15-2012
- Rules, adoption by commissioner, 15-2024
- "Sale" defined, 15-2004
- Sale of unregistered securities prohibited, 15-2007
- Salesmen
 - association with issuer or broker-dealer required, 15-2006
 - bond required for registration, 15-2006
 - definition, 15-2004
 - fee for registration, 15-2016
 - registration required, procedure, 15-2006
 - service of process on salesmen, 15-2015
- Savings institutions excluded from definition of "investment adviser," 15-2004
- Securities exempt, 15-2013
- "Security" defined, 15-2004
- Service of process on registrant or issuer, 15-2015
- Short-term obligation, exemption, 15-2013
- "State" defined, 15-2004
- Statement for registration, by whom filed, 15-2011
- Stock dividends, exemption, 15-2014
- Subpoena powers of investment commissioner, 15-2019
- Suspension of registration, grounds and procedure, 15-2012
 - federal suspension or stop order, automatic suspension on, 15-2011
- Teachers, exclusion from definition of "investment adviser," 15-2004
- Title of act, 15-2002
- Treasury stock included in definition of "security," 15-2004
- Trust companies excluded from definition of "investment adviser," 15-2004
- Underwriter purchases, exemption, 15-2014
- Uniformity of construction of act, 15-2003
- Unsolicited offers, exemption, 15-2014
- Voting-trust certificates included in definition of "security," 15-2004
- Warrant to purchase security construed as offer, 15-2004
- Withdrawal of registration, registration statement, 15-2011

SEDITION

See CRIMINAL OFFENSES, Sediton

SEEDS

- Agricultural seeds, labeling, transfer between labelers, requirements, 3-802.2
- Classifications, revision of, 3-802.5
- Dealers, processors and warehousemen, license required, 3-311
 - activities covered by license, 3-311 (1), (2)
 - application for license, 3-311 (3)
 - bonding and insurance requirements, establishment by rule authorized, 3-311 (7)
 - cancellation of licenses, grounds, 3-311, 3-313, 3-316
 - certified seed grower processing or labeling from own production exempt, 3-311 (1)
 - dealer's license, application, fee, expiration, cancellation, 3-313
 - additional fee not required of certain licensees, 3-313 (1)
 - definition of terms, 3-310
 - equipment and handling procedures, establishment of minimum standards by rule, 3-311 (4)

INDEX

References are to Title and Section numbers

SEEDS (Continued)

Dealers (Continued)

- fee for license, 3-311
- inspections during normal business hours authorized, 3-311 (4)
- issuance on fiscal year basis, 3-311 (2)
- judicial review in district court, 3-316
- moneys to be deposited in general fund, 3-317
- nonresident licensees, designation of resident agent, 3-311 (3)
- penalty for violation of act, 3-316
- rules, promulgation by department, 3-315
- screenings, restrictions on movement, 3-312
- violations, 3-314
- violations, civil and criminal remedies, 3-316

Definitions, 3-802.1

- Grain and seed laboratory to inspect and test seeds offered for sale, 3-805
- access to premises to make examination, 3-805

Laboratory testing of samples submitted by department, 3-806.1

Prohibitions, 3-802.4

Vegetable and flower seeds, labeling, 3-802.3

SELF-DEFENSE

- Justification for use of force, 94-3-102

SELF-INCRIMINATION

- Constitutional protection against self-incrimination, 1972 Const., II, 25

SENTENCES

See CRIMINAL PROCEDURE, Sentence and judgment

Appellate review of legal sentences, 95-2501 to 95-2530

Commutation of prison sentence to commitment to juvenile facilities, 80-2210

Good time allowance to prison inmates, 80-1905

Occupational licensing of criminal offenders, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS

Post-conviction hearing, 95-2601 to 95-2608

Western Interstate Corrections Compact, 95-2308 to 95-2312

SEPARATION OF POWERS

- Constitutional declaration, 1972 Const., III, 1

SEPTIC TANKS

- Cleaning of septic tanks, 69-5401 to 69-5408—See SANITARY LICENSEES

SERIAL NUMBERS

- Machine, vehicle or electrical device, obscuring serial number as criminal offense, punishment, 94-6-311

SERVICE OF PROCESS

Affidavit of service, M. R. Civ. P., Rule 4 D(9)

Attorney general, service upon in tort actions against state, 83-704

Attorney, service on, M. R. Civ. P., Rule 5(b)

Continuance to allow opportunity to defend, M. R. Civ. P., Rule 4 D(6)(b)

Criminal procedure, summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613

Delivery of copy, manner of making, M. R. Civ. P., Rule 5(b)

Fraternal benefit societies, service through commissioner of insurance, 40-5352

Industrial accident board under occupational disease act, service of process on, 92-1344

Insurers, service through commissioner of insurance, 40-2818

proceedings after service, 40-2819

Jurisdiction of person acquired by service, M. R. Civ. P., Rule 4 B(2)

Justices' court, service of summons, 93-6711

counties without qualified constable, appointment by county commissioners for service of process, 93-7709

Milk control board, method of serving, 27-429

INDEX

References are to Title and Section numbers

SERVICE OF PROCESS (Continued)

- Motions, when service required, M. R. Civ. P., Rule 5(a)
- Motion to raise insufficiency, M. R. Civ. P., Rule 12(b)
- Numerous defendants, service on, M. R. Civ. P., Rule 5(c)
- Orders, when service required, M. R. Civ. P., Rule 5(a)
- Personal service outside state, M. R. Civ. P., Rule 4 D(3)
- Personal service within state, M. R. Civ. P., Rule 4 D(2)
- Persons by whom served, M. R. Civ. P., Rule 4 D(1)
- Pleadings, when service required, M. R. Civ. P., Rule 5(a)
- Proof of service, M. R. Civ. P., Rules 4 D(8), 5(f)
 - amendment of proof, M. R. Civ. P., Rule 4 D(7)
- Publication, service by, M. R. Civ. P., Rule 4 D(5)
- Real estate brokers residing outside state, service through real estate commission, 66-1936
- Secretary of state, service through, M. R. Civ. P., Rule 4 D(6)
- Securities act registrant or issuer, service on, 15-2015
- Sheriffs and deputies to serve process, M. R. Civ. P., Rule 4 D(1)
- Small claims courts, 93-334
- Subpoena, service, M. R. Civ. P., Rule 45(c)
- Third parties, service on, M. R. Civ. P., Rule 14(a)
- Time allowed for proceedings after service by mail, M. R. Civ. P., Rule 6(e)
- Unauthorized insurers, service on
 - attorney's fee, when included in judgment, 40-3408
 - citation of act, 40-3403
 - commissioner as agent for process, 40-3404
 - default judgment, when allowed, 40-3405
 - defense of action, 40-3407
 - exemptions from service of process provisions, 40-3406
 - motion to quash or set aside service, 40-3407
 - procedure for service, 40-3405
 - uniformity of interpretation of act, 40-3403
- Unit ownership property, service with respect to, 67-2338
 - agent to receive service named in declaration, 67-2314
 - change of agent to receive process, 67-2339

SETOFF

Assignments excluded from Uniform Commercial Code, 87A-9-104

SEWAGE DISPOSAL

- Definition of terms, 69-4802
- Domestic water supply, protection, 69-4901 to 69-4908—See WATER SUPPLY,
Domestic water supply
- Excavations in street, protection of lines against damage, 32-4801 to 32-4808—See
STREETS, Underground facility
- Municipal service to industry or person outside municipality, 11-1001
- Permit required for sewage disposal system, 69-4806
- Policy of state, 69-4801
- Privately owned waters, chapter not applicable to, 69-4804
- Subdivision plans subject to sanitary restriction, 69-5003
 - definition of "subdivision," 69-5002
 - plat of subdivision not to be filed unless in compliance, 69-5004
 - policy of state, 69-5001
 - rules and standards for enforcement of requirements, 69-5005

SEWERS

County water and sewer districts, 16-4501 to 16-4535—See COUNTY WATER AND
SEWER DISTRICTS

SEX DISCRIMINATION

- Discriminatory practices unlawful, 64-304 to 64-312—See CIVIL RIGHTS, Dis-
criminatory practices
 - lavatory, bathing or dressing facilities, separation permissible, 64-307 (2)
- Freedom from discrimination because of sex as civil right, 64-301

INDEX

References are to Title and Section numbers

SHELTERED WORKSHOPS

See STATE PURCHASES

SHERIFFS

- Accident report forms for motorboat or vessel accidents, 69-3512
- Arrest, sheriffs privileged from arrest, when, 95-616
- Consolidation of office with police departments in certain counties, 16-2726 to 16-2730
 - See COUNTIES, Department of public safety
- Deputies, qualifications of, 16-3705
 - work week, days off, in first and second class counties, 16-3705.1
- Fees and traveling expense, 25-226
- Fingerprints taken on felony arrest, 80-2003
 - salary withheld on failure to furnish information, 80-2004
- Fish and game laws, enforcement by sheriffs, 26-114
- Gambling offenses, duty to prosecute, punishment for violation, forfeiture of office, 94-8-414, 94-8-416
- Identification bureaus, assistance by state bureau in establishing, 80-2006
- Law enforcement teletypewriter communications committee, membership on, 82-3902
- Liability insurance provided by county for privately owned vehicle, 16-2725
- Liability insurance to be purchased for department, 16-2731 to 16-2733
 - coverage, 16-2732
 - persons covered, 16-2731
 - policy limits, 16-2731
 - purchase from county general fund, 16-2733
- Machine guns, inspection of manufacturer's stock and registration, 94-8-207
- Medical expense for prisoners, reimbursement, 16-2818
- Practice of law by sheriff, restrictions on, 93-902
- Prisoners, claims for expense of maintenance, 16-2818
- Retirement system
 - account created within public employees' retirement system, credit of moneys to account, 68-2605
 - administrative control by board, 68-2605 (1)
 - appropriated funds transferred to account, audit, 68-2605 (2)
 - investment of funds in account, 68-2605 (1)
 - sources of funds comprising account, 68-2606
 - state treasurer as custodian, 68-2605 (1)
 - administrative expense paid by state, 68-2609
 - beneficiary, designation, change, procedure, 68-2621
 - benefit payments in addition to workmen's compensation payments, exception, 68-2625
 - benefits erroneously computed and paid, adjustment of subsequent payments, 68-2623
 - contributions of members
 - amount, 68-2608
 - commencement of contributions, 68-2607
 - deducted from salary of member, 68-2608
 - deposit to credit of member in retirement account, 68-2608
 - county contributions, amount, 68-2609
 - death benefits, 68-2618
 - beneficiary, designation, change, procedure, 68-2621
 - death after retirement, 68-2617
 - deferred compensation plan, retirement benefits unaffected by, 68-2706—See DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES
 - definition of terms, 68-2602
 - disability retirement
 - amount of allowance, 68-2613
 - death after retirement, payments, 68-2617
 - death before retirement, payments, 68-2618
 - deduction of workmen's compensation payments, 68-2618
 - disability determined by board, 68-2613
 - exemption of allowance from tax and legal process, 68-2620
 - monthly payment of allowance, 68-2619
 - "total disability" defined, 68-2613

INDEX

References are to Title and Section numbers

SHERIFFS (Continued)

Retirement system (Continued)

- dormant member account transferred to employer account, member not prejudiced by, 68-2627
- early retirement option, amount, eligibility, 68-2611
- establishment as actuarial reserve system, benefits payable, 68-2601
- false statements or falsification of records as misdemeanor, penalty, 68-2623
 - adjustment of subsequent payments to compensate for excess payments, 68-2623
- membership in system
 - compulsory membership, 68-2607
 - optional membership, 68-2607
 - reinstatement after withdrawal of contributions, 68-2616
- military service qualified for service credit, methods, procedure, 68-2622
- prior service credits, 68-2606
 - "prior service" defined, 68-2602 (17)
- reinstatement of membership after withdrawal of contributions, 68-2616
- retirement board created, composition, 68-2603
 - functions of board, 68-2604
- revocation, suspension, or refusal to grant state annuity, 68-2624
 - "state annuity" defined, 68-2602
- service credits
 - definition, 68-2602 (15)
 - military service qualified for credit, procedure, 68-2622
 - prior service credits, 68-2606
 - "prior service" defined, 68-2602 (17)
 - service retirement, credits required for, 68-2610 to 68-2614
- service retirement
 - amount of allowance, 68-2612
 - death of member after retirement, options of beneficiary or nominee, 68-2626
 - discharge from employment before ten years of completed service, rights of member, 68-2615
 - early retirement option, eligibility, 68-2611
 - eligibility, application, 68-2610
 - exemption from tax and legal process, 68-2620
 - increase in allowance, for contributions paid after twenty-five years, 68-2608
 - involuntary termination after ten years of service, options of member, 68-2614
 - monthly payment of allowance, 68-2619
 - voluntary resignation from employment, options of member, duties, 68-2615
- severability of provisions, 68-2629
- sheriffs ineligible to membership in public employees' retirement system, prior membership not prejudiced, 68-2628
- termination of member's employment, benefits payable
 - discharge for cause other than incompetence, malfeasance or unlawful conduct, 68-2615
 - incompetence, malfeasance, or unlawful conduct as reason for discharge, 68-2615
 - involuntary termination after ten years of service, 68-2614
 - voluntary resignation, 68-2615

Salaries, conformity to schedule required, 25-609.1

Service of process by sheriffs, M. R. Civ. P., Rule 4 D(1)

Summoning of jurors, 93-1509

Vehicle, purchase or lease with county funds authorized, 16-2724

Work release program for prisoners, duties, 95-2216

SHODDY

Condemnation of mattresses in violation, 69-4706

Definition of "mattress," 69-4701

Inspections by health authorities, 69-4705

Label required on each mattress, 69-4702

Prohibited acts, 69-4703

separate offense for each mattress made or sold, 69-4707

Rules and standards of department, 69-4704

INDEX

References are to Title and Section numbers

SHOOTING PRESERVES

See FISH AND GAME, Shooting preserves, 26-1601 to 26-1614

SHOPLIFTING

Municipal power to define as theft and to punish for, 11-990

Temporary detention of suspect by merchant, 95-611

“concealment” defined, 95-611.1

concealment not proof of theft, 95-611.2

definitions, 95-611.1

“shoplifting” defined, 95-611.1

SIDEWALKS

Municipal construction without special improvement district, 11-2226

SIGNATURES

Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

SKI LIFTS

See PASSENGER TRAMWAYS, 69-6601 to 69-6617

SLANDER

Notice to publisher or broadcaster and opportunity to correct, 64-207.1

Truth as evidence in suits and prosecutions, jury determination of law and facts, 1972 Const., II, 7

SLOT MACHINES

Definition, 94-8-429

“Person” defined, 94-8-430

Possession or permitting use as misdemeanor, punishment, 94-8-431

Vending machines exempt from law, 94-8-429

SMALL CLAIMS COURTS

Appointment of one or more judges, salaries, proration, qualifications, 93-325

Authorization for creation, 93-322

Creation by resolution of county commissioners and order of district court, 93-323

Existence continues until abolished, 93-324

Jurisdiction of courts, 93-329

removal of action from district court upon order of district judge, 93-329 (2)

Liberal construction of act, 93-328

Location of courts, office hours, duties of judges, 93-326

Multi-county small claims courts, proration of judges' salaries among counties, 93-327

Parties to actions, representation, 93-330

fiduciary as eligible party, 93-330 (6)

party to transaction as eligible party, filing of assigned claim prohibited, 93-330 (4), (5)

representation by attorney prohibited unless all parties represented, 93-330 (2), (3)

Procedure, 93-332 to 93-344

affidavit filed with clerk of court, form, 93-332

appeal to district court, when attorneys' fees allowed, 93-343

commencement of actions, 93-332

court reporter, when required, 93-339

entry of judgment, 93-342

evidence, witnesses, subpoena power, 93-341

executions governed by laws relating to district court judgments, 93-338

fees and costs, 93-344

hearing date, 93-335

informality of proceedings, 93-339

jury trial, when ordered by court, 93-339

request for jury by defendant, 93-340

waiver of jury by filing of affidavit, 93-340

order of court, form, contents, 93-332, 93-333

INDEX

References are to Title and Section numbers

SMALL CLAIMS COURTS (Continued)

Procedure (Continued)

- prejudgment attachment or garnishment prohibited, 93-338
- responsive pleading by defendant, counterclaim, jurisdiction, 93-337
- service of process on defendant, fees, 93-334
- return of service, 93-336

Venue, 93-331

SMALLPOX

Vaccination required for school attendance, 69-4515

SMALL TRACT FINANCING ACT

See TRUST INDENTURES, 52-401 to 52-417

SNOWMOBILES

See MOTOR VEHICLES, Snowmobiles, 53-1012 to 53-1028

SOCIAL SECURITY ACT

Retirement systems, referendum under Act, certification by governor, 59-1102.1
Title XX benefits, establishment and collection of fees for, 71-210.4, 71-210.5

SOCIAL SERVICES

Aged persons or disabled adults, protective services for, 71-1914 to 71-1919

- "aged person" defined, 71-1915 (2)
- annual report of department, 71-1919
- definition of terms, 71-1915
- "disabled adult" defined, 71-1915 (3)
- duties of department, 71-1917
- "department" defined, 71-1915 (1)
- foster family care homes for aged and disabled adult persons, 71-2304 to 71-2307
 - definition of terms, 71-2304
 - personal or custodial care offered, 71-2307
 - private residences licensed as adult foster homes, standards established by department, 71-2306
 - purpose of law, 71-2305
 - skilled nursing care not provided, 71-2307
 - "skilled nursing care" defined, 71-2304 (7)
- "protective services" defined, 71-1915 (4)
- purpose of law, 71-1916
- rules and regulations, promulgation by department authorized, 71-1918
- short title, 71-1914

Chronic renal disease, establishment of program for treatment of persons unable to pay, 71-2501, 71-2502

- purpose of law, 71-2501
- standards for determining eligibility established by department, 71-2502

Geriatric state hospital patients, care and treatment in community nursing homes, 80-2413

- duties of department, 80-2414
- legislative intent, 80-2413
- location of nursing homes, 80-2413 (2)

Title XX of Social Security Act

- deposit and use of fees, 71-210.4
- establishment and collection of fees for social services by department, 71-210.4

SOIL AND WATER CONSERVATION

Districts, 76-101 to 76-233—See CONSERVATION DISTRICTS

Water resources board, establishment, members, 89-103—See WATER RESOURCES CONSERVATION

SOLDIERS AND SAILORS

See MILITIA AND MILITARY; VETERANS

SOVEREIGN IMMUNITY

Doctrine abolished, 1972 Const., II, 18; 83-706.1

INDEX

References are to Title and Section numbers

SOVEREIGNTY

- Popular sovereignty, 1972 Const., II, 1
- State sovereignty, 1972 Const., II, 2

SPECIAL ADMINISTRATOR

See PERSONAL REPRESENTATIVES

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

- "Audiologist" defined, 66-3902
- Board created, appointment and terms of members, 82A-1602.31
 - "board" defined, 66-3902
 - duties of board, 66-3905 (7)
 - expense of members, 66-3905 (2)
 - meetings of board, frequency, quorum, 66-3905 (1)
 - open to public, exceptions, 66-3905 (4)
- Communications with client privileged, examination as witness in civil action without consent of client prohibited, 93-701-4 (9)
- Definition of terms, 66-3902
- Department of professional and occupational licensing, duties, 66-3905
 - employment of personnel, 66-3905 (3)
 - notice to licensees, time for, contents, 66-3907 (4)
 - publication of list of licensees, copy mailed to each licensee, 66-3907 (8)
 - report to governor, 66-3905 (6)
- Earmarked revenue fund, deposit of moneys to credit of, 66-3910 (2)
- Injunction of unlawful practice, 66-3913
- License required for practice, 66-3903
 - academic and clinical qualifications for license, 66-3906 (1)
 - continuing education, procedures established by board, 66-3907 (9)
 - criminal offenders, licensure of, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS
 - examination of applicants, re-examination after failure, 66-3906 (2)
 - existing practitioners, waiver, 66-3908 (5)
 - fee for application and examination, 66-3910 (1) (a)
 - licensees of another state, waiver of examination, 66-3908 (6)
 - persons holding certificate of clinical competence, waiver of examination, 66-3908 (7)
 - record of examination scores kept by department, 66-3909 (5)
 - scope and method of examination, 66-3909
 - waiver of written examination for applicants having successfully passed national examination, 66-3909 (3)
 - exempt persons and activities, 66-3904
 - fee for license, 66-3910 (1) (b)
 - licensure of persons not having formal requirements for, prerogative of board, 66-3908 (8)
 - municipal or political subdivision license tax prohibited, 66-3910 (8)
 - persons qualified prior to July 1, 1976, issuance of license to, 66-3908 (2)
 - practice pending application for license, qualifications, 66-3909 (7)
 - provisional license, qualifications for, restrictions on practice, 66-3908 (3)
 - reciprocity provisions generally, 66-3908
 - renewal of license, 66-3907
 - failure to renew within four years, conditions for reinstatement, 66-3910 (7)
 - fee for renewal, 66-3910
 - revocation, suspension or refusal to renew license, grounds, 66-3911
 - reinstatement of revoked license, fee, 66-3910 (6)
- Penalty for violation, 66-3912
- Purpose of law, 66-3901
- "Speech pathologist" defined, 66-3902
- Students as interns, 66-3904 (4)

SPORTING EVENTS

- Bribery to influence outcome as criminal offense, punishment, 94-8-112
- Sports pools—See GAMBLING, Sports pools

INDEX

References are to Title and Section numbers

STATE AGENCY FOR SURPLUS PROPERTY

Cost of operation, payment from receipts from sales, 82-3104
Rebate of surplus funds, 82-3104

STATE APIARIST

Abolition of position and transfer of functions, 82A-502

STATE AUDITOR

Assignment of claims against state
 effect of assignment, 83-904
 limitations on assignment, 83-902
 notice to auditor, 83-901
 rules promulgated by auditor, 83-903
Board of land commissioners, member of, 1972 Const., X, 4
Candidacy for public office during term authorized, 1972 Const., VI, 5
Duties, 1972 Const., VI, 4; 79-101
Election, 1972 Const., VI, 2
Executive branch, member of, 1972 Const., VI, 1
Impeachment, subject to, 1972 Const., V, 13
Inability to discharge powers and duties of office, declaration of vacancy, procedure, 59-609
Insurance commissioner *ex officio*, 40-2701
Investment commissioner *ex officio*, 15-2001
Oath of office, 1972 Const., III, 3
Other government employment prohibited during term, 1972 Const., VI, 5
Qualifications, 1972 Const., VI, 3
Residence at seat of government, 1972 Const., VI, 1
Salary, 1972 Const., VI, 5; 25-501
Term of office, 1972 Const., VI, 1
Vacancy in office, how filled, 1972 Const., VI, 6
Warrants, order in which drawn, 79-104

STATE BOARD OF EDUCATION

Advisory council, creation authorized, limitation, 82A-110
Board of public education and board of regents as constituting state board, 1972 Const., X, 9; 75-5615
Board of public education as constituent, 1972 Const., X, 9; 75-5609
 composition of board, appointment and qualifications of members, 75-5610
 meetings of board, notice, 75-5613
 oath of office, 75-5610
 per diem and expenses of members, 75-5614
 powers and duties, 75-5617
 quorum, 75-5612
 record of proceedings required, 75-5616
 rules, adoption, 75-5616
 seal, adoption and use, 75-5616
 state equalization aid, administration and distribution, 75-6917
 transition from former board of education, procedure, 75-5618
 vacancies, filling by governor, 75-5610
Board of regents as constituent, 1972 Const., X, 9; 75-5609, 75-5615—See BOARD OF REGENTS
Budget requests, review and unification, 75-5615
Chairman in absence of governor, selection, 75-5615
Commissioner as nonvoting participant at meetings, 75-5615
Compliance with executive reorganization limited by constitutional requirements, 82A-501.2
Composition of board, 1972 Const., X, 9; 75-5609 (3)
Co-operative extension service, functions transferred to, 82A-502
Creation, 1972 Const., X, 9 (1); 82A-501
Definition, 75-5609
Educational broadcasting commission allocated to board for administrative purposes, authority to hire personnel retained, 82A-511
Governor as president and nonvoting participant at meetings, 75-5615

INDEX

References are to Title and Section numbers

STATE BOARD OF EDUCATION (Continued)

- Long-range planning and co-ordinating and evaluating policies as responsibility of board, 75-5615
- Meetings, 75-5615
- Montana arts council allocated to board, certain functions retained in board of trustees, 82A-501.1
- Powers and duties, 1972 Const., X, 9; 75-5615, 75-5617 (3)
- Quorum, 75-5615
- Records of proceedings to be kept, 75-5616
- Rules, adoption, 75-5616
- Seal, adoption and use, 75-5616
- State historical society allocated to board, certain functions retained in board of trustees, 82A-501.1
- compensation and expenses of trustees, 82A-507 (3)
- State library commission allocated to board, certain functions retained in board of trustees, 82A-501.1
- Superintendent of public instruction as secretary, 75-5615
- Tie vote at meetings, breaking by governor, 75-5615
- Transition from former board of education, procedure, 75-5618

STATE BOARD OF INVESTMENT

- Creation, allocation to department of administration, composition, designation as quasi-judicial board, 82A-204

STATE CAPITOL

- Budget requests for maintenance, repair, replacement, renewal and additions to state buildings, 82-3309
- Building improvement and repair
 - bonds, indentures and notes, issuance authorized, 78-737
 - registration of instruments, 78-742
 - sale of instruments, 78-742
 - terms of instruments, 78-741
- borrowing power of board of examiners, 78-737
 - maximum amount, 78-740
- contracts for work authorized, 78-739
- employment of architects and engineers authorized, 78-738
- legislative areas, consultation with legislative council, 78-746
- repayment of obligations, funds available for, 78-743
 - budget act inapplicable to appropriations, 78-745
 - sinking fund, deposit of moneys in, 78-744
- Building program, scheduling to minimize effects of weather on construction and work opportunities, 78-910
- Committee for building and planning, organization and meetings, 78-1301
 - master plan for development, factors considered, 78-1302
 - report to legislature, 78-1303
 - travel expense of legislative members, 78-1304
- Continuity of government, seat of government in Helena except during emergency, 1972 Const., III, 2
 - war, moving seat of state government, 82-3807
- Department of administration to oversee property in capitol area, 82-3309, 82-3310
- Emergency temporary seat of government in event of enemy attack, designation, method, 82-1310
- Employment security commission building
 - addition to building, 78-1011 to 78-1020
 - architect, employment, 78-1002, 78-1012
 - bids for construction, 78-1003, 78-1013
 - bond issues authorized, 78-1001, 78-1011
 - amount authorized, 78-1004, 78-1014
 - interest and sinking fund, 78-1008, 78-1018
 - interest rate, 78-1005, 78-1015
 - principal and interest, payment, 78-1007, 78-1017
 - purchase by board of land commissioners, 78-1009, 78-1019

INDEX

References are to Title and Section numbers

STATE CAPITOL (Continued)

- Employment security commission building (Continued)
 - bond issues authorized (Continued)
 - registration of bonds, 78-1006, 78-1016
 - sale of bonds, 78-1006, 78-1016
 - terms and provisions of bonds, 78-1005, 78-1015
 - budget act inapplicable, 78-1010, 78-1020
 - contractor's bond, 78-1003, 78-1013
 - location, 78-1001, 78-1011
 - original building, 78-1001 to 78-1010
 - service buildings outside capitol area, 78-1021 to 78-1030—See UNEMPLOYMENT COMPENSATION, Commission
- Executive officers to reside at seat of government, 1972 Const., VI, 1
- Insurance of buildings on deductible plan, 78-1102
 - administration of plan, 78-1103
 - proceeds from insurance, deposit and use, 78-1101
- Land grants for capitol building
 - dedication of funds accumulated, 78-503
 - deposit of revenue in federal and private revenue fund, 78-501
 - income dedicated to repayment of improvement and repair bonds, indentures and notes, 78-743
- Location in Helena, 1972 Const., III, 2
- Long-range building program financing
 - bonds authorized, form, contents and terms, 79-2202
 - amount of authorization, 79-2205
 - cigarette tax proceeds paid into funds, 84-5606.30
 - definition of terms, 79-2201
 - fiscal agent to assist state board of examiners, 79-2202
 - referendum on tobacco tax, 79-2203
 - refunding bonds authorized, 79-2203
 - sinking fund account, sources and use of funds, 79-2203
 - taxes pledged to sinking fund, 79-2203
 - vote required for authorization, 79-2202
 - waiver of security provisions by bondholders, 79-2204
- Master plan for development of capitol area, 78-1302
- Reconstruction and improvement
 - acquisition of land, 78-1201, 78-1203
 - architect and engineers, employment authorized, 78-1202
 - bonds, indentures and notes, 78-1205 to 78-1208
 - borrowing power, 78-1201, 78-1204
 - budget act inapplicable, 78-1209
- Veterans' and pioneers' memorial, purpose and use, 78-202
 - historical society and library, fittings and furnishings, 44-526
 - moneys available for expenditure in, 78-302
- War, moving seat of state government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3807

STATE DEBT COLLECTION SERVICE

- Aggrieved person's right to hearing, 84-7111
- Assistance of department in collection of delinquent accounts owing state agencies, 84-7103, 84-7104
 - authorized assistance, 84-7103
 - mandatory assistance, circumstances requiring, 84-7104
- Collection of assigned debt by department authorized, 84-7105
- Debt previously written-off, collection authorized, procedure, 84-7108
- Debts to which law inapplicable, 84-7109
- Definitions, 84-7102
- Department of revenue authorized to establish service, purpose, 84-7101
- Moneys collected deposited to account of agency to which owing, 84-7106
- Offset of debt against tax refunds authorized, notice to debtor required, 84-7105
- State agencies to adopt rules, regulations and forms for participation in act, 84-7110
- "State agency" defined, 84-7102

INDEX

References are to Title and Section numbers

STATE DEBT COLLECTION SERVICE (Continued)

- Write-off of uncollectible accounts by state agencies, assignment to department, procedure, 84-7104, 84-7105
- Write-off procedures established by department, 84-7107

STATE DEPARTMENTS AND BOARDS

- Appeals from administrative agencies, district court jurisdiction, 1972 Const., VII, 4
- Appointment of officers, 1972 Const., VI, 8
- Discriminatory practices unlawful, 64-306 (5)—See CIVIL RIGHTS, Discriminatory practices
- Facsimile seal, use authorized, 59-1303
- Governor as supervisor of departments, 1972 Const., VI, 8
- Heads of departments, 1972 Const., VI, 8
 - removal from office as provided by law, 1972 Const., V, 13
 - reports to governor, 1972 Const., VI, 15
- Interlocal co-operation, 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
- Number of principal departments, 1972 Const., VI, 7
- Open meetings of public agencies
 - legislative intent, 82-3401
 - meetings to be open, exceptions, 82-3402
 - minutes to be available for public inspection, 82-3403
- Procedure before state agencies, 82-4201 to 82-4225—See ADMINISTRATIVE PROCEDURE
- Reorganization of executive branch, 1972 Const., VI, 7; Title 82A—See REORGANIZATION OF STATE GOVERNMENT
- Service of process on state boards or agencies, M. R. Civ. P., Rule 4 D(2)(h)
- Single executive to head each department, 1972 Const., VI, 8
- Temporary commissions, 1972 Const., VI, 7

STATE DEPOSITORY BOARD

- Creation, allocation to department of administration for administrative purposes, 82A-209

STATE ENTOMOLOGIST

- Abolition of position and transfer of functions, 82A-502

STATE INSTITUTIONS

- Advisory committees for institutions, appointment by warden or superintendent, 80-1406
- Agricultural programs for treatment or rehabilitation, 80-1405
- Alcoholic beverages, furnishing to inmates as misdemeanor, penalty, 80-1418
- Board of institutions, existence and composition, appointment and qualifications of members, 82A-806
 - allocation to department for administrative purposes, 82A-806 (3)
 - designation as quasi-judicial board, 82A-806 (4)
 - powers and duties of board, 80-1407.1
- Boulder river school and hospital, 80-2303 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL
- Budget requests, review and approval by board, 80-1405
- Center for the aged, 80-2501 to 80-2503—See CENTER FOR THE AGED
- Children's center, 80-2101 to 80-2107—See CHILDREN'S CENTER
- Cost of support of residents
 - action for collection of costs, 80-1604
 - definition of terms, 80-1602
 - deposit of receipts in state treasury, 80-1603
 - financial ability of resident or responsible person, undue financial burden prohibited, 80-1603
 - foster home and group home care included, 80-1601
 - institutions subject to per diem charge, enumeration, 80-1601
 - investigation to determine per diem, 80-1603
 - lien of judgment or claim on property of responsible person, 80-1604
 - long-term resident, parental responsibility for costs limited, 80-1605
 - “long-term resident” defined, 80-1605 (3)
 - relief from charges exceeding specified limits as intent of act, 80-1606

INDEX

References are to Title and Section numbers

STATE INSTITUTIONS (Continued)

Cost of support of residents (Continued)

- monthly assessment of charges against resident or responsible person, 80-1603
- rate of per diem, annual recomputation, 80-1603

Definition of terms, 80-1402

Department of institutions created, 82A-801

- board of eugenics, existence and composition, allocation, designation, 82A-805
- board of pardons allocated to department for administrative purposes, 82A-804—
See PROBATION, PAROLE AND CLEMENCY
- criminal investigation functions transferred to department of law enforcement, 82A-1202
- director as head of department, appointment, 82A-801
- functions of department, 82A-801.1
- institutions subject to control by department enumerated, 80-1403
- juvenile correctional facilities, establishment, control and management, 80-1410 to 80-1412—See Juvenile facilities, below
- motor vehicle functions transferred to department of law enforcement, 82A-1205
- powers and duties of department, 80-1405
- purpose of department, 80-1401
- reorganized department, 82A-801 to 82A-806—See REORGANIZATION OF STATE GOVERNMENT, Department of institutions

Drugs, furnishing to inmates as misdemeanor, penalty, 80-1418

Establishment as public good may require, 1972 Const., XII, 3

Galen state hospital, 80-1701 to 80-1704—See GALEN STATE HOSPITAL

Geriatric patients, community nursing home care and treatment for, duties of department, 80-2414

Industrial activities permitted, 80-1501

- contract labor arrangements prohibited, 80-1503
- exchange of products with other states prohibited, 80-1503
- payments to prison inmates permitted, 80-1501
- public sale of products prohibited, 80-1503
- receipts from sale of goods, disposition, 80-1502

Juvenile facilities

- absentee from facilities, apprehension and return, 80-2211
- penalty for aiding residents to leave facility, 80-2212
- aftercare division and agreements, 80-1414 to 80-1416
- age of child terminating control, 80-1415
- detention for violation of agreement, 80-1416
- terms of aftercare agreement, 80-1414
- violation of agreement, hearing, order, appeal, 80-1414.1
- age of child for commitment, 80-2204
- control and management of correctional centers, 80-1411
- curriculum of instruction, standards and subjects included, 80-2203
- definition, 80-2211
- establishment by department, 80-1410
- expense of commitment and transportation, 80-2206
- Galen State Hospital, juvenile reception and evaluation center, 80-1704
- Indian children, contract with governing body of reservation for residential and educational services for, 80-1419
- industrial activities permitted, 80-1501 to 80-1503—See Industrial activities permitted, above
- institutions in department, 80-1403
- medical examination before commitment, 80-2205
- prison sentence, commutation to commitment to department of institutions, 80-2210
- records and reports to accompany child committed, 80-2205
- special programs, 80-1411
- superintendents to manage facilities, 80-2202
- transfer of child from children's center, 80-2105
- transfer to juvenile facility from state prison, 80-2210
- transfer to other facilities or institutions, 80-2209
- transportation to school, 80-2206
- university aid to residents, 80-2213
- youth forest camp, work program, 80-1412

INDEX

References are to Title and Section numbers

STATE INSTITUTIONS (Continued)

Lands for use of institutions, lease or purchase, 80-1405
Legislative consent required to move, discontinue or abandon institution, 80-1403
Legislative proposals for long-range programs, 80-1405
Mental retardation, functions of department, 80-2606
Prison, 80-1901 to 80-1908—See PRISONS AND PRISONERS, State prison
Pulmonary disease hospital, 80-1701 to 80-1704—See GALEN STATE HOSPITAL
Removal of inmate without authority as misdemeanor, penalty, 80-1417
Reports to governor, 1972 Const., VI, 15
Research programs, participation by institutions at direction of department, 80-1413
Rights of persons committed, 1972 Const., XII, 3
Rules and regulations for government of institutions, 80-1405
Tax exemption, 1972 Const., VIII, 5
University facilities, utilization by institutions, 80-1405
Veterans' home, 80-1801 to 80-1804—See VETERANS, Home for veterans
Warden or superintendents of institutions, responsibilities, 80-1406

STATE LANDS

Beds of lakes and streams, proceedings by board to determine title, 81-2305
Board of land commissioners, composition, authority, 1972 Const., X, 4
Brush disposal on state lands, 81-1601
Classification of state lands, records, contents, 81-302
 board to classify lands, 1972 Const., X, 11
 reclassification, capability inventory required, contents, 81-302
Coal-mining leases, restrictions on issuance, 81-511
 foreign interests and sale to foreign interests restricted, 81-511 (1)
 strip mining restrictions, 81-511 (2)
Definition of terms relating to, 81-102
Department of state lands created, 82A-1101
 board created, 1972 Const., X, 4
 commissioner's position created, appointment, 82A-1104
 functions of department, 82A-1101.1
 head of department, 82A-1101
 powers and duties, 81-105
Development of resources, 81-2401 to 81-2408—See Resource development, below
Disposition of public lands, restrictions on, 1972 Const., X, 11
Equalization payments to counties
 claim for payments filed by department, 81-1118
 computation of payments to counties, 81-1116
 county distribution of payments, 81-1120
 form for computing payment completed by department in each county, 81-1117
 examination by department, 81-1118
 school district use of payments, 81-1121
 statement transmitted to department of revenue in each county, 81-1115
 warrant for payment to counties, 81-1119
Errors in deeds and conveyances, correction by board, 81-106
Exchange of lands with United States and counties, rights of current users, 81-304
Exchange of public lands, when authorized, 1972 Const., X, 11
Exchange of state land for private land, restrictions, hearing, 81-307
Farm mortgage lands, title vested in state and transferees, 75-7302
Federal installations and facilities donated, acceptance by board of examiners, 81-1101.1
Fees chargeable by department, 81-108
Forests
 conservation appropriations and allotments, receipt by state treasurer, 81-1410
 sale of timber from state forests, supervision and scaling by state forester, 81-1408
Geothermal resources development, leases for, 81-2601 to 81-2613—See GEOTHERMAL RESOURCES
Grazing lands, periodical appraisal and re-examination, 81-404
 rental rate for leasing, 81-402(3)
Historic and prehistoric sites and objects on state lands, preservation, 81-2501 to 81-2514
 —See HISTORIC AND PREHISTORIC STRUCTURES
Lands granted by United States, selection and location by department, 81-301

INDEX

References are to Title and Section numbers

STATE LANDS (Continued)

- Lease for coal mining, maximum term and exchange for longer term, 81-502
- Lease of lands generally, authority of board, 81-103.1
- Leases of agricultural and grazing lands and city and town lots
 - agricultural use of land leased for grazing, 81-414
 - animal-unit-month formula for rental on grazing land, 81-433
 - appeal to board from cancellation, 81-422
 - appraisal of lands, frequency, 81-401
 - assignment of lease, filing with and approval of department, preferences, fee, 81-419
 - bids and applications to be in writing and sealed, 81-405
 - cancellation of lease, grounds and procedure, 81-422
 - crop share rental basis for leasing of agricultural lands, 81-402
 - deposit required with bid, retention, return or forfeiture, 81-436
 - duration of leases, 81-407
 - improvements, sale by lessee to successor, arbitration, 81-421, 81-421.1
 - inspection of land to determine best possible use, 81-413
 - notice of expiration or cancellation of lease, 81-407
 - policy of state as to leasing of lands, 81-401
 - qualifications of lessee, 81-407
 - renewal of lease, preference of lessee, 81-405
 - rent to be charged in lease, 81-402
 - sale of land, right reserved by state in lease, 81-402
 - withdrawal of land from leasing, 81-405
- Leases of mineral lands, authority, 81-701
 - coal-mining leases, restrictions on issuance, 81-511—See Coal-mining leases, above
- Lease with option to purchase, taxability of land, 84-204
 - valuation and assessment of land, 84-205
- Mining lease, form of application for, 81-606
- Money paid state by mistake to be refunded, 81-107
- Multiple-use management concept, 81-103
- Natural area preservation, 81-2701 to 81-2713—See NATURAL AREA PRESERVATION
- Oil and gas leases
 - authority for lease, 81-1701
 - payment of royalties to state, 81-1705
 - reports of lessees to department, 81-1705
 - royalties payable under lease, 81-1704
 - rules and regulations, adoption and publication, 81-1707
 - surface rights reserved, 81-1701
 - waste, provisions for prevention, 81-1701
- Private lands, exchange of state lands for, restrictions and limitations, 81-307
- Prospecting permits, issuance, scope, fee, application for mineral lease, 81-601.1
- Public school fund, lands included in, 1972 Const., X, 2
- Report of moneys received by state treasurer, 81-1122
- Resource development
 - account in earmarked revenue fund, creation, purposes, 81-2403
 - deduction from income, maximum percentage, crediting deductions, 81-2405, 81-2406
 - investment of moneys in account, 81-2407
 - restriction on use of funds, 81-2404
 - definition of terms, 81-2402
 - policy of state, 81-2401
 - rules and regulations adopted by board, 81-2408
- Sale of lands
 - amounts purchased by one person, 81-908
 - forfeiture for failure to pay for lands purchased, 81-912
 - improvements by lessee, settlement for, 81-919
 - mineral reservations required, 81-902
 - notice of sale, publication, 81-910
 - payment terms, 81-915
 - preference to lessee, 81-912
 - price for which sold, 81-912

INDEX

References are to Title and Section numbers

STATE LANDS (Continued)

Sale of lands (Continued)

- proceeds of sale, funds to which credited, 81-912
- public auction, where held, 81-909
- purchased land subject to taxation, assessment, 81-928
 - list of state lands sold furnished to department of revenue or agent in county, 81-928 (3)
- qualifications of purchasers, 81-908
- shoreline lands reserved from sale, 81-903
- taxability of property held under contract of sale, 84-204
- valuation and assessment of property, 84-205

Timber sales from state lands in general, prices and terms, 81-1601

Trust status of public lands, 1972 Const., X, 11

United States, restrictions on disposition of land grant from, 1972 Const., X, 11

Water for use on land, appropriation by state, 81-2018

STATE OF MONTANA

Action authorized for use or benefit of another, M. R. Civ. P., Rule 17(a)

Bluebunch wheat grass as official grass of state, 19-124

Claims against state, assignment of, duties of state auditor, 83-901 to 83-904

Contract actions against state, law not modified by Uniform Commercial Code, 87A-10-103

Criminal jurisdiction, 95-304

Discriminatory practices prohibited, 64-306(5)—See CIVIL RIGHTS, Discriminatory practices

Employees

- group insurance for employees authorized, 11-1024
- minimum hours of salaried personnel, 59-510(1)

Flathead Indian country, criminal jurisdiction

- county commissioner's consent required for assumption of jurisdiction, 83-802
- customs and culture of Indians to be preserved, 83-805
- date of assumption of jurisdiction, 83-803
- obligation of state to assume jurisdiction, 83-801
- proclamation of governor assuming jurisdiction, 83-802
- resolution of tribes requesting state jurisdiction, 83-802
- rights, privileges, and immunities of Indians preserved, 83-804
- withdrawal of tribal consent to state jurisdiction, 83-806

Limitation of actions and defenses relating to bond issues, 93-2612

Natural area preservation, 81-2701 to 81-2713—See NATURAL AREA PRESERVATION

Public participation in governmental processes

- examination of government documents or observation of deliberation of public bodies, exception, 1972 Const., II, 9
 - costs and attorneys' fees recoverable in successful action to enforce right, 93-8632
- legislative sessions and meetings open to public, 1972 Const., V, 10
- participation by people in decision making process of state and local government, 1972 Const., II, 8

Sapphire and Montana agate as official state gem stones, 19-123

Service of process on state or state agencies, M. R. Civ. P., Rule 4 D(2) (h)

Sovereign immunity abolished, exception, Const., II, 18

Sovereignty of state, 1972 Const., II, 2

Territorial jurisdiction

- Blackfeet highway, reassumption of jurisdiction, 83-104.1
- lands purchased by United States, 83-108
- migratory bird reservations, consent to acquisition by United States, 83-113

Tort actions against

- act not to affect actions arising under workmen's compensation act, 83-707
- appeals
 - bond not to be required of state, 83-703
 - right of, 83-703
- bonds not to be required of state, 83-703

INDEX

References are to Title and Section numbers

STATE OF MONTANA (Continued)

Tort actions against (Continued)

- compromise and settlement, power, 83-704
- immunity abolished, 1972 Const., II, 18; 83-706.1
- judgment as obligation of state, 83-705
- jurisdiction of district courts, 83-701
- procedure and practice, 83-702
- service of process upon attorney general, 83-704
- state not to be liable for interest prior to judgment nor for punitive damages, 83-701

Tort claims against governmental entities, comprehensive insurance plan authorized, 82-4303, 82-4306

- actions in district court for enforcement of claims, 82-4316
 - district court jurisdiction, applicable procedural rules, 82-4320
 - joinder of governmental entity required in action against employee, 82-4323(1)
 - legislative purpose, 82-4322.1
- limitation of actions, 82-4317
- process, service on state, 82-4322
- punitive damages, attorney's fees or interest not recoverable, 82-4324
- recovery against governmental entity as bar to action against employee, 82-4323
- venue, 82-4321

administration and procurement of insurance by department of administration, 82-4303

apportionment of insurance costs among participants, 82-4305

attachment or execution for collection of claim prohibited, 82-4327

claims administration under act, 82-4311 to 82-4319

- approval or denial of claim, notice, 82-4315
- compromise or settlement of claim, 82-4319
- contents of claim, 82-4313
- fee for filing claim, 82-4311
- inaccuracies in claim, effect, 82-4313
- incapacitated, minor or absent claimant, filing by agent authorized, 82-4313
- late claims disallowed, 82-4314
- time and place of filing claim, 82-4311, 82-4312

deductible insurance plan authorized, limits of deductible amounts, 82-4303

- reserve authorized, method of accumulation, 82-4305

definition of terms, 82-4302

employee indemnified by governmental entity against judgment or recovery, 82-4323(3)

"governmental entity" defined, 82-4302

limits of coverage, 82-4307

payment of claim or judgment in absence of insurance coverage, 82-4325, 82-4326

- instrumentality of state, 82-4325
- political subdivision, 82-4326

plan exclusive, departments, agencies and entities to comply, 82-4304

policy conditions construed as in compliance with act, certain standard and customary exclusions excepted, 82-4308

political subdivisions authorized to procure insurance under plan, 82-4306

- tax levy for payment of premiums authorized, 82-4309

risks authorized to be insured, 82-4303

title of law, 82-4301

tort liability of governmental entities, 82-4310

Veterans administration center, state jurisdiction accepted, 83-114

War

continuity in government, 1972 Const., III, 2; 82-3801 to 82-3809

—See WAR, Continuity in government

post-attack resource management, 77-2401 to 77-2406—See WAR, Resource management

STATE ORPHANS' HOME

See CHILDREN'S CENTER, 80-2101 to 80-2107

STATE PUBLICATIONS DISTRIBUTION CENTER

See LIBRARIES, State publications distribution center, 44-132 to 44-139

INDEX

References are to Title and Section numbers

STATE PURCHASES

- Advertising for bids required, contract awarded to lowest responsible bidder, exception, 82-1913
 - bidder right to be present at opening of bids and to inspect bids, 82-1921
 - collusion or secret agreements between bidders prohibited, violation voids contract, 82-1922
 - impartiality to be shown in letting contracts, 82-1920
 - preference for resident bidders, 82-1920
 - record of bids and contracts to be kept by department, open for inspection, 82-1921
 - "resident" defined, qualifications of resident bidder, 82-1925
 - supplies of legislative assembly and state agencies, advertising for bids required, 82-1915
 - violation as misdemeanor, penalty, 82-1922
- Buildings built, leased or purchased, compliance with safety and building codes, 82-1918
- Contractors—See PUBLIC CONTRACTORS
 - licenses, 84-3501 et seq.
 - preference to Montana bidders, 82-1924 to 82-1926
- Contracts
 - duration limited, exception, 82-1918
 - exclusive power of department of administration to make contracts for printing and supplies, 82-1906
 - rental contracts with option to purchase building authorized, 82-1918
- Data processing, duplicating and other equipment, procurement and location supervised by department, 82-1915.1
- Definition of "department," 82-1901.1
- Department of administration to direct and supervise purchase and sale of state supplies, 82-1902
- Duration of purchase contract, limitation, 82-1918
- Duties of purchasing agent in general, 82-1902
- Emergency purchases by departments, 82-1919
- Estimates by departments, approval and authority to purchase, 82-1904
- Executive residence of governor, furnishings, repair and maintenance, 82-1906
- Fresh fruits and vegetables purchased directly by responsible agency, accounting to department, 82-1919
- Furnishings, fuel and lights, procurement by department, 82-1909
- Immediate delivery articles or performance of service, procurement, 82-1919
- Institutions and departments, exclusive power to purchase for, 82-1906
- Legislative assembly, supplies and services for, 82-1909
- Manufactured articles, sale by department authorized, 82-1906
- Montana Small Business Purchasing Act, 82-1929 to 82-1937
 - definition of terms, 82-1931
 - "department" defined, 82-1931
 - designation of small business set-asides, procedure for making, 82-1932
 - insufficient bids, reissuance of invitation without set-asides, 82-1933
 - legislative statement of purpose and policy, 82-1930
 - other state procurement laws and rules applicable, 82-1936
 - preference to domestic small business, 82-1935
 - purchase order to be sent to successful bidder, time for, 82-1934
 - rejection of bids other than from small businesses, 82-1932
 - "small business" defined, 82-1931
 - severability of provisions, 82-1937
 - short title of act, 82-1929
 - "small business" defined, 82-1931
 - small business set-asides for specified commodities, equipment or services authorized, 82-1932
 - professional services excepted, 82-1932
 - "small business set-aside" defined, 82-1931(3)
 - successful bidder, name and address to be advertised in newspaper, 82-1934
- Payment for purchases, sources of funds, 82-1905
- Printing and publications, contracts for, procedure, 82-1916
 - approval by department required, 82-1916.1
 - supplies, procedure for letting contract, 82-1917
- Requisition of responsible agency or official required for contract of purchase, 82-1904

INDEX

References are to Title and Section numbers

STATE PURCHASES (Continued)

- Sheltered workshops and work activity centers with federal certification, 82-1938 to 82-1940
 - definition of terms, 82-1939
 - policy of state, 82-1938
 - purchase contracts negotiated without competitive bidding, limit of amount, 82-1940
- State property, sworn statement of person in charge of, 82-1911
- Stationery, printing, paper and publications procured by department, 82-1909
- Testing of articles and commodities to be purchased, 82-1908
- Transfer of purchase contract prohibited and declared void, 82-1922
- Warehouses, maintenance by department authorized, 82-1903
 - inspection authorized, 82-1923

STATE RECORDS

- Department of administration management program, 82-3311
 - definition of "records," 82-3312
 - destruction of records, procedure for authorization, 82-3313
 - library and museum material excluded from program, 82-3312
- Microfilm division of historical society, creation and functions, 82-3205
- Preservation of noncurrent records of permanent value, 82-3207
 - state archives and archivist, 82-3208, 82-3209
- Tax records, destruction authorized by board of equalization, 84-724

STATE TRAINING SCHOOL AND HOSPITAL

See BOULDER RIVER SCHOOL AND HOSPITAL, 80-2303 to 80-2312

STATE TREASURER

- Administrative functions transferred to department of administration, exceptions, 82A-214
- Custodian of moneys and securities of state, 79-201
- Deposit of funds with treasurer by state agencies, 79-306
- Deposit of public funds, solvent banks, building and loan associations and savings and loan associations as eligible depositories. security required, immunity from liability, 79-301
 - eligible securities, 79-307
- Duties in general, 79-201
- Funds in treasury
 - accounts within funds, creation and abolition by controller, 79-413
 - clearing and suspense accounts authorized, 79-412
 - disbursements from funds, appropriations, general laws or contracts authorizing, 79-415
 - enumeration and description of funds, 79-410
 - future laws or contracts requiring segregation of moneys, interpretation, 79-411
 - investment funds authorized under unified plan, 79-412
 - previous definitions of funds superseded, 79-411
 - purpose of act, 79-409
 - records of funds and accounts maintained by treasurer and controller, 79-414
 - short title of act, 79-409
 - special funds abolished and transferred to general fund, 79-416
 - state payroll revolving account, 25-507.8
 - temporary loans from one account to another, 79-414
 - general fund, loans to, 79-415
- Gas and oil royalties from federal government, deposit in highway account, 79-211
- Insurance department examinations revolving fund, establishment, 40-2717
- Investment department examinations revolving fund, establishment and use, 15-2024
- Police department reserve fund, investment by treasurer, 11-1829
- Refund of moneys paid into treasury through error, 79-415
- Repurchase agreements and mortgages, custody and control by receipt of confirmation of purchase, 79-201
- Salary, 25-501
- Securities placed in safekeeping with banks, receipt in lieu of actual securities authorized, 79-201
- Treasurer of all state agencies, 79-306

INDEX

References are to Title and Section numbers

STATE TREASURER (Continued)

Unclaimed bank funds, deposit in general fund, 5-1117
Warrants required for payment of all money, 79-202

STATE WATER CONSERVATION BOARD

See WATER RESOURCES CONSERVATION

STATUTE OF FRAUDS

Affirmative defense, M. R. Civ. P., Rule 8(c)
Agreement not to be performed within year, 13-606, 93-1401-7
Answer for default of another, promise to, 13-606, 93-1401-7
Investment securities, contract for sale, 87A-8-319
Marriage as consideration for agreement, 13-606, 93-1401-7
Personal property other than goods and securities, contract for sale, 87A-1-206
Real property agency contract, 13-606
Real property sale or lease, 13-606, 93-1401-7
Sale of goods, 87A-2-201

STATUTES

"Man" and "men" deemed to include "woman" or "women," 12-217
Recodification of Revised Codes of Montana, 1947, 12-501 to 12-510—See CODES AND LAWS
Uniform Probate Code, general rules of construction, 91A-1-102 to 91A-1-105—See UNIFORM PROBATE CODE

STENOGRAPHERS

Military court reporter, compensation, 77-1906

STERILIZATION LAW, VOLUNTARY

Applicability, 69-6401
Application for voluntary sterilization, contents, 69-6403
Board of eugenics, existence and composition, appointment and qualifications of members, 82A-805
 allocation to department for administrative purposes, 82A-805
 designated as quasi-judicial board, 82A-805
 immunity of members from civil or criminal liability, exception, 69-6405
Certificate of approval required, contents, distribution of copies, 69-6404(2)
Hearing on voluntary application, findings required, 69-6403
 designation of person to perform sterilization, 69-6403
 findings prerequisite to approval, certification, 69-6404
 presence of applicant required, 69-6403(1)
 voluntary consent signed by applicant required, 69-6403(2)
Incapacity of applicant to voluntarily consent, certification, sterilization unlawful, exception, 69-6406
Liability, 69-6405
Persons to whom law applicable, 69-6401
Physician performing sterilization, certificate required, 69-6404(2)
 immunity from civil or criminal liability, exception, 69-6405
Purpose of law, 69-6401
Religious or moral tenets as basis for refusal to participate in sterilization, 69-5223
 definition of terms, 69-5222
 severability of provisions, 69-5224
 "sterilization" defined, 69-5222(1)
Showing prerequisite to approval, 69-6403, 69-6404
Voluntary consent signed by applicant required, 69-6403(2)

STOLEN PROPERTY

Vehicles used in transporting stolen livestock, forfeiture to state, 94-35-204, redes. 46-3005
Venue of prosecution, 95-408

STREET RAILROADS

Financing statements of railroads, contents and place of filing, 87A-9-302.2
 definition of terms, 87A-9-302.1
 Uniform Commercial Code, application, 87A-9-302.3

INDEX

References are to Title and Section numbers

STREETS

- Alley approaches, construction or replacement without special improvement district, 11-2226.1
- Sidewalks, curbs and gutters, construction without special improvement district, 11-2226
- Special fuel dealers and users license tax, disposition of funds, 84-1840
- Underground facility information to be sought before excavating in street, 32-4802
 - architects and engineers to obtain information, 32-4808
 - damage to facilities from failure to obtain information, liability, 32-4804
 - damage to facilities from negligence notwithstanding information, 32-4805
 - definition of terms, 32-4801
 - emergency repairs, exemption for, 32-4807
 - filing of notice as to where information obtainable, 32-4803
 - immunity if information not given, 32-4806
 - procedure for seeking information, 32-4803
 - time allowed for providing information, 32-4803

STRIP COAL MINES

- Conservation and prevention of waste of strippable coal, 50-1401 to 50-1408—See MINES AND MINING, Conservation and prevention of waste of strippable coal
- Eminent domain not available, 93-9902
- Regulation, 50-1034 to 50-1057—See MINES AND MINING, Strip and underground mining regulation

STUDENT INTERN PROGRAM

- Legislative interns, 43-720 to 43-731—See LEGISLATURE, Student interns

SUBDIVISIONS

- Montana Subdivision and Platting Act, 11-3859 to 11-3876—See PLANNING AND ZONING, Subdividing and platting of land
- Sanitary restrictions as to water supply and sewage disposal, 69-5003
 - definition of "subdivision," 69-5002
 - plat not accepted unless in compliance, 69-5003, 69-5004
 - policy of state, 69-5001
 - rules and standards for enforcement of requirements, 69-5005

SUBPOENAS

- Coroner's inquest, subpoena of witnesses, compelling attendance, 95-805, 95-806
- Criminal procedure, issuance, requirements and form, 95-1801
 - discovery, subpoena as discovery device, 95-1803
- District court subpoena requiring attendance or production of evidence, M. R. Civ. P., Rule 45(a), (b)
- Grand jury, issuance of subpoenas, 95-1407
- State agency conducting administrative proceedings, power of subpoena, 82-4220

SUFFRAGE

See ELECTIONS

- Right of suffrage, 1972 Const., II, 13

SUICIDE

- Descent of property as in cases of natural death, 1972 Const., II, 30

SUMMONS

- Amendment of summons, when permitted, M. R. Civ. P., Rule 4 D(7)
- Criminal cases, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
- Dismissal for failure to issue or serve summons, M. R. Civ. P., Rule 41(e)
- Form and signature of summons, M. R. Civ. P., Rule 4 C(2)
- Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 1, 18
- Issuance by clerk, M. R. Civ. P., Rule 4 C(1)
- Justices' courts, service of summons, 93-6711
 - counties without qualified constable, appointment by county commissioners for service of process, 93-7709
- Service with complaint, M. R. Civ. P., Rule 4 D(2)

INDEX

References are to Title and Section numbers

SUPERINTENDENT OF PUBLIC INSTRUCTION

- Advisory council, creation authorized, limitations, 82A-110
- Appeal to superintendent from county agencies, 75-5709
- Assistant superintendents, employment, 75-5705
- Board of land commissioners, member of, 1972 Const., X, 4
- Board of public education, ex officio nonvoting member, 1972 Const., X, 9; 75-5610
- Board of regents, ex officio nonvoting member, 1972 Const., X, 9; 75-5610
- Books and educational aids, preservation, 75-5706
- Candidacy for public office during term authorized, 1972 Const., VI, 5
- County superintendents, assistance to and meetings with, 75-5706
- Definition of term used throughout title, 75-5701
- Election, 1972 Const., VI, 2; 59-203, 75-5702
- Elementary supervisor, employment, 75-5705
- Employment of personnel, 75-5704, 75-5705
- Executive branch, member of, 1972 Const., VI, 1
- Forms, printing and distribution, 75-5706
- High school supervisor, employment, 75-5705
- Impeachment, subject to, 1972 Const., V, 13
- Inability to discharge powers and duties of office, declaration of vacancy, procedure, 59-609
- Laws of state, printing and publication, 75-5706
- Media supervisor, employment, 75-5705
- Music supervisor, employment, 75-5705
- Oath of office, 1972 Const., III, 3; 75-5703
 - time of taking oath, 75-8304
- Other government employment prohibited during term, 1972 Const., VI, 5
- Physical education supervisor, employment, 75-5704
- Powers and duties, 1972 Const., VI, 4; 75-5707
- Qualifications, 1972 Const., IV, 4, VI, 3; 75-5702
- Records of office, preservation, 75-5706
- Report to governor, 75-5706
- Residence at seat of government, 1972 Const., VI, 1
- Salary, 1972 Const., VI, 5; 25-501
- Sale of goods or services to school district as misdemeanor, penalty, 75-8303
- Seal of office, 75-5706
- Secretary to board of public education, 75-5612
- Special education supervisor, employment, 75-5704
- State equalization aid to schools, duties, 75-6918, 75-6921
- Term of office, 1972 Const., VI, 1; 75-5703
- Transportation supervisor, employment, 75-5705
- Vacancy in office, how filled, 1972 Const., VI, 6; 75-5703
- Vocational education staff, employment, 75-5704

SUPPORT

- Husband and wife, duty to support each other, 36-103
 - liability of spouse for support provided by others, 36-119
 - not liable when abandoned by or separated from spouse, exceptions, 36-120
- Nonsupport as criminal offense, 94-5-608
- Reciprocal enforcement
 - citation of act, 93-2601-82
 - civil enforcement
 - appeals in the public interest to be taken by attorney general, 93-2601-74
 - arrest of obligor to prevent fleeing jurisdiction, 93-2601-56
 - bond or cash deposit required by responding state, 93-2601-66
 - communications between husband and wife not privileged, 93-2601-62
 - conflict of laws determined by state in which obligor present, 93-2601-47
 - contempt proceedings by responding court, 93-2601-66
 - continuance, when granted to permit adducing of evidence, 93-2601-60
 - cost and fees, 93-2601-55
 - counties within state, application of procedure between, 93-2601-73
 - credit of payment under responding court order against other support orders, 93-2601-71
 - diligent prosecution required in responding state, 93-2601-58
 - enforcement of duties of support, proceedings for, 93-2601-49

INDEX

References are to Title and Section numbers

SUPPORT (Continued)

Reciprocal enforcement (Continued)

civil enforcement (Continued)

- evidence, rules governing, 93-2601-63
- immunity of obligor from criminal prosecution based on required answers, 93-2601-61
- initiating court, duty of, 93-2601-54
- jurisdiction of parties restricted to support proceedings, 93-2601-72
- minor obligee, legal custodian may file petition in behalf of, 93-2601-53
- officials to represent obligee, 93-2601-52
- order of support by responding court, 93-2601-64
 - transmission of order to initiating court, 93-2601-65
 - transmission of order to other counties in state, 93-2601-64
- paternity, adjudication of, 93-2601-67
- pending actions do not stay support proceedings, 93-2601-70
- periodic payments required by responding court, 93-2601-66
- petition for support, contents, filing and venue, 93-2601-51
- receipt and disbursement of payments by initiating court, 93-2601-69
- remedies of state or political subdivision furnishing support, 93-2601-48
- state information agency, duties of, 93-2601-57
- statement of payments, transmittal to initiating court, 93-2601-68
- support pendente lite, 93-2601-70
- tracing of obligor and property, duties of prosecuting attorney in responding state, 93-2601-59
- transmission of payments to initiating court, 93-2601-68

criminal enforcement

- interstate rendition, 93-2601-45
 - conditions of interstate rendition, 93-2601-46

definitions, 93-2601-42

presence of obligee in state not required for duty, 93-2601-6

purposes of act, 93-2601-41

registration of foreign support orders

- additional remedies, 93-2601-75
- clerk to maintain registry of orders, 93-2601-77
- enforcement of registered foreign order, 93-2601-80
- filing necessary to register, 93-2601-79
- notice of registration to obligor, 93-2601-79
- prosecuting attorney to represent obligee, 93-2601-78
- registered foreign order treated like order of state, 93-2601-80
- registration by obligee authorized, 93-2601-76
- uniformity of interpretation of acts, 93-2601-81

SUPREME COURT

Appointment of commission to prepare rules of civil procedure for adoption, 93-222

Briefs filed in supreme court

- amicus curiae briefs, when permitted, M. R. App. Civ. P., Rule 24
- appellant's brief, contents and arrangement, M. R. App. Civ. P., Rule 23(a)
- appendices to briefs, when filed, M. R. App. Civ. P., Rule 25(a)
 - arrangement of appendix, M. R. App. Civ. P., Rule 25(c)
 - contents of appendix, M. R. App. Civ. P., Rule 25(b)
- costs allowed for briefs, M. R. App. Civ. P., Rule 23(g)
- cross-appeals, briefs in cases involving, M. R. App. Civ. P., Rule 23(h)
- dismissal of appeal on failure to file brief, M. R. App. Civ. P., Rule 26(c)
- exhibits, reproduction in separate volume, M. R. App. Civ. P., Rule 25(d)
- length of briefs, M. R. App. Civ. P., Rule 23(g)
- number of copies filed and served, M. R. App. Civ. P., Rule 26(b)
- parties, references to in briefs, M. R. App. Civ. P., Rule 23(d)
- record, references to in briefs, M. R. App. Civ. P., Rule 23(e)
- reply brief, contents, M. R. App. Civ. P., Rule 23(c)
- respondent's brief, contents, M. R. App. Civ. P., Rule 23(b)
- statutes, rules and regulations, reproduction in briefs, M. R. App. Civ. P., Rule 23(f)
- time for filing briefs, M. R. App. Civ. P., Rule 26(a)
- title of case, statement on cover and first page, M. R. App. Civ. P., Rule 27(c)

INDEX

References are to Title and Section numbers

SUPREME COURT (Continued)

- Briefs filed in supreme court (Continued)
 - typewritten briefs, format, M. R. App. Civ. P., Rule 27(b)
 - typographical form of briefs, M. R. App. Civ. P., Rule 27(a)
- Building, construction of
 - architects and engineers, employment authorized, 78-1202
 - bonds, indentures and notes, 78-1205 to 78-1208
 - borrowing authorized, 78-1203, 78-1204
 - budget act inapplicable, 78-1209
- Calendar, placement of causes on, M. R. App. Civ. P., Rule 39(a)
 - advancement of causes having precedence, M. R. App. Civ. P., Rule 39(c)
 - setting causes for argument, M. R. App. Civ. P., Rule 39(b)
- Commissions of justices and clerk, recording, M. R. App. Civ. P., Rule 19(a)
- Composition of court, 1972 Const., VII, 3
- Decisions to be in writing, contents, 93-212
 - concurring justices to sign decision, 93-212
 - dissent to be in writing, 93-212
- District judges power of chief justice to assign for temporary service, 1972 Const., VII, 6
- Entry and notice of judgments and orders, M. R. App. Civ. P., Rule 30(a)
- Fees chargeable by clerk, 82-503
- Filing of papers with supreme court, manner of accomplishment, M. R. App. Civ. P., Rule 20(a)
- Injunction granted by supreme court on ex parte proceedings, M. R. App. Civ. P., Rule 40
- Jurisdiction, 1972 Const., VII, 2
- Justices
 - absence from state forfeits judicial position, 1972 Const., VII, 10
 - arrest, justices privileged from, 95-616
 - disqualification, grounds, 93-901
 - election, 1972 Const., VII, 8
 - judicial standards commission, 1972 Const., VII, 11
 - nominations confirmed by senate, 1972 Const., VII, 8
 - oath of office, 1972 Const., III, 3
 - recording oath, M.R.App.Civ.P., Rule 19(a)
 - political candidacy forfeits judicial position, 1972 Const., VII, 10
 - practice of law by justices, restrictions on, 1972 Const., VII, 9; 93-902
 - qualifications of justices, 1972 Const., VII, 9; 93-702
 - removal and discipline, 1972 Const., VII, 11
 - salary, 1889 Const., VIII, 29; 1972 Const., VII, 7; 25-501
 - selection of justices, 1972 Const., VII, 8
 - solicitation of compensation on account of office prohibited, 1972 Const., VII, 9
 - substitution of district judge for supreme court justice, 1972 Const., VII, 3
 - terms of office, 1972 Const., VII, 7
 - justices in office on effective date of new constitution, 1972 Const., Transition Schedule, Sec. 4
 - vacancies, how filled, 1972 Const., VII, 8
- Minutes of court, approval and attestation, M. R. App. Civ. P., Rule 19(b)
- Motions in supreme court, contents and manner of filing, M. R. App. Civ. P., Rule 22
- Oaths of justices and clerk, recording, M. R. App. Civ. P., Rule 19(a)
- Oral argument before supreme court
 - agreement of parties to dispense with argument, M. R. App. Civ. P., Rule 29(f)
 - consolidation of cross and separate appeals for argument, M. R. App. Civ. P., Rule 29(d)
 - exhibits, use during argument, M. R. App. Civ. P., Rule 29(g)
 - failure of counsel to appear for argument, M. R. App. Civ. P., Rule 29(e)
 - notice of time and place of argument, M. R. App. Civ. P., Rule 29(a)
 - order and content of argument, M. R. App. Civ. P., Rule 29(c)
 - postponement of argument, request for, M. R. App. Civ. P., Rule 29(a)
 - time allowed for argument, M. R. App. Civ. P., Rule 29(b)
- Original proceedings in supreme court
 - application for writ or order, contents, M. R. App. Civ. P., Rule 17(d)
 - presentation of application to clerk, M. R. App. Civ. P., Rule 17(c)
 - time allowed for presentation of application, Rule 17(e)

INDEX

References are to Title and Section numbers

SUPREME COURT (Continued)

- Original proceedings in supreme court (Continued)
 - briefs, contents and filing, M. R. App. Civ. P., Rule 17(g)
 - circumstances justifying institution of original proceedings, M. R. App. Civ. P., Rule 17(a)
 - constitutional questions raised, notice to attorney general, M. R. App. Civ. P., Rule 38
 - costs taxed by court, M. R. App. Civ. P., Rule 33(d)
 - briefs and appendices, restriction on costs, M. R. App. Civ. P., Rule 33(b)
 - notation of costs by clerk, M. R. App. Civ. P., Rule 33(f)
 - unnecessary costs not recovered, M. R. App. Civ. P., Rule 33(e)
 - decision, notice to parties, M. R. App. Civ. P., Rule 35(a)
 - hearing on application, M. R. App. Civ. P., Rule 17(h)
 - parties to proceedings, designation, M. R. App. Civ. P., Rule 1
 - public officer as party to proceeding, M. R. App. Civ. P., Rule 37(c)
 - substitution of parties for death or other cause, M. R. App. Civ. P., Rule 37
 - preliminary action by supreme court on application, M. R. App. Civ. P., Rule 17(f)
 - rehearing, grounds and time for filing of petition, M. R. App. Civ. P., Rule 34
 - Rules of Appellate Civil Procedure
 - application of rules and statutes, M. R. Civ. P., Rule 72
 - citation of rules, M. R. App. Civ. P., Rule 43(a)
 - effective date of rules, M. R. App. Civ. P., Rule 43(b)
 - exemption of statutory proceedings from rules, M. R. App. Civ. P., Rule 42(a)
 - pending proceedings, application of rules to, M. R. App. Civ. P., Rule 43(b)
 - scope of rules, M. R. App. Civ. P., Rule 1
 - statutes superseded by rules, M. R. App. Civ. P., Rules 42(c), 43(c)
 - suspension of rules by supreme court, M. R. App. Civ. P., Rule 3
 - statutory provisions, application to proceedings, M. R. Civ. P., Rule 72, M. R. App. Civ. P., Rule 17(b)
 - voluntary dismissal of proceeding, M. R. App. Civ. P., Rule 36
- Practice of law by justices, restrictions on, 93-902**
- Prehearing conference to simplify issues before court, M. R. App. Civ. P., Rule 28**
- Process extends to all parts of state, 1972 Const., VII, 2**
- Removal of papers from clerk's office, restrictions, M. R. App. Civ. P., Rule 39(d)**
- Reports of decisions, call for public bidding authorized, 82-2002**
- Retired justice, call for duty, 93-1130**
- Retirement system for justices, 93-1107 to 93-1132—See JUDGES, Retirement system**
- Review division for review of certain criminal sentences, 95-2501**
- Rule-making power, 1972 Const., VII, 2**
- Rules of civil procedure, power to prescribe, 93-2801-1 to 93-2801-8—See CIVIL PROCEDURE**
- Rules of criminal procedure, adoption, 95-103 to 95-108—See CRIMINAL PROCEDURE, Supreme court rules**
- Salary of chief justice and justices, 25-501**
- Service of papers filed in supreme court required on all parties, M. R. App. Civ. P., Rule 20(b)**
 - personal service or mail, M. R. App. Civ. P., Rule 20(c)
 - proof of service, M. R. App. Civ. P., Rule 20(d)
- Supervisory control over other courts, 1972 Const., VII, 2**
- Time allowed for proceedings in supreme court**
 - computation of days, M. R. App. Civ. P., Rule 21(a)
 - extension of time allowed by court, M. R. App. Civ. P., Rule 21(b)
 - mail service, additional time allowed after, M. R. App. Civ. P., Rule 21(c)
- United States Supreme Court, action on receipt of mandate from, M. R. App. Civ. P., Rule 35(c)**
- Vesting of judicial power in supreme court, 1972 Const., VII, 1**

SURPLUS PROPERTY

Financing of state agency, 82-3104

SURVEYORS

See ENGINEERS AND LAND SURVEYORS

INDEX

References are to Title and Section numbers

SWIMMING POOLS AND BATHING AREAS

- Definition of terms, 69-5502
- Enforcement powers of state and local officers, 69-5505
- Inspections by state and local health officials, 69-5505
 - publication of reports of inspections, 69-5506
- Nuisance, violation of chapter or rules as, 69-5510
 - abatement of nuisance, 69-5505
- Penalty for violations, 69-5511
- Plans for construction submitted to state department, 69-5507
- Policy of state, 69-5501
- Records and data furnished to state department, 69-5508
- Rules for sanitation adopted by department, 69-5503
- Standards for sanitation and safety, 69-5509
- Supervision of sanitation by department, 69-5504

SWINE

- Feeding of garbage regulated, 46-2602 to 46-2610—See GARBAGE INDUSTRY

SYPHILIS

- See VENEREAL DISEASE, 69-4601 to 69-4617

T

TAXATION

- Agricultural commodities, levies for disease control and indemnification, predator control, inspection, protection, research and promotion, 1972 Const., XII, 1
- Agricultural harvesting machinery licensed in other states, fee per machine, taxation, 84-6008
 - custom combiner's tax in lieu of other taxes, 84-6015
- Agricultural lands, classification and assessment, 84-437.1 to 84-437.14
 - agricultural use only considered in valuation, 84-437.3
 - continuation of valuation until change of use, 84-437.8
 - eligibility of land for agricultural purpose valuation, 84-437.2
 - factual details to be shown on assessment list, 84-437.12
 - improvements and facilities, area covered by as agricultural land, 84-437.6
 - legislative intent, 84-437.1
 - reclassification as nonagricultural land, 84-437.15, 84-437.16
 - departmental action, notice, reclassification, 84-437.15
 - owner notifying assessor, 84-437.16
 - refund of late filing fee, 84-437.17
 - roll-back tax assessed upon change in use of land, computation, 84-437.4
 - eminent domain, tax not applicable to land taken by, 84-437.10
 - liability to attach upon change in use, 84-437.8
 - owner changing classification, notice to and duties of assessor, 84-437.16
 - part of tract, change in use on, 84-437.9
 - procedures for assessment, 84-437.5
 - rules and regulations, 84-437.13
 - tract in two or more counties considered on basis of total area, 84-437.11
 - transfer of ownership ineffective to change classification, 84-437.8
 - violation as misdemeanor, 84-437.14
- Aircraft, proration of personal property tax on, 84-4218
- Airline flight property tax, hearing before state tax appeal board, 84-6405
- Airline property, annual assessment of, 84-6402—See also Airline flight property, in bound volume index
 - appeal to state tax appeal board, 84-6405.1
 - appearance before department for adjustment of assessment, 84-6405
 - determination of value, methods, 84-6404
- Air pollution equipment and facilities, classification for tax purposes, 69-3923
- Airport authority taxing power, 1-909
 - certification of levy, collection and use of revenue, 1-916
 - county levy for airport purposes, 1-917
- Appeal procedures for taxpayer grievances, 1972 Const., VIII, 7

INDEX

References are to Title and Section numbers

TAXATION (Continued)

Assessment of property for taxation

- agricultural lands, 84-401, 84-437.1 to 84-437.14—See Agricultural lands, above
 - assessment book, insertion of name of person claiming property, 84-508
 - blank forms prescribed by department, 84-405
 - cash value as basis, agricultural lands excepted, 84-401
 - classes of property, percentage applied, 84-401
 - separate assessment of land and improvements, when, 84-401
 - classification and appraisal, duties of department, 84-429.7
 - county assessors as agents of department, salary, facilities, 84-402
 - department of revenue, appraisal and equalization duties, 84-402
 - appeal to state tax appeal board, 84-403
 - general powers, 84-412
 - percentage basis to be determined and assigned by department, 84-404
 - equal valuation used throughout state, 1972 Const., VIII, 4
 - farm statistics to be taken by department, 84-449
 - refusal to furnish or furnishing fraudulent statistics as misdemeanor, penalty, 84-452
 - return of statistics to commissioner of agriculture, 84-450
 - source of statistics, 84-451
 - industrial development projects, 11-4108
 - irrigation and drainage facilities, 84-206
 - lands sold by state, list transmitted to department, 84-510
 - livestock in feeding pens or enclosures, 84-406
 - motor vehicles, 53-114, 84-406, 84-6008
 - periodic revaluation of taxable property, 84-429.14
 - equalization of valuations, 84-429.15
 - statutory method exclusive, 84-429.16
 - supplementary nature of provisions, 84-429.17
 - refusal of owner to make statement, duties of department, 84-413
 - state to appraise, assess and equalize valuation of property, 1972 Const., VIII, 3
 - telegraph, telephone and other utility property
 - annual statement to department, 84-901
 - appeal to state tax appeal board, 84-903.1
 - time of assessment, 84-406
 - unit ownership property, assessment against unit owners, 67-2340
 - rules and regulations for appraisal and assessment, 67-2342
 - utility properties
 - annual statement to department, 84-901
 - apportionment statement transmitted to counties, 84-906
 - statement of county agent to department, 84-902
- Audit by department of taxable values, costs charged to counties, 84-708.9
- cost recovered paid into general fund, 84-708.10
- Banks**
- corporation license tax, application to banks, 84-1501.6, 84-1501.7—See Corporation license tax, below
 - moneyed capital and shares of bank, assessment of, 84-307
 - basis for assessment, 84-308
 - offices in more than one county, assessment and apportionment of tax, 84-4606
- Barrelage tax on beer, 4-317**
- proceeds of tax, disposition, 84-1901
- Bounty fund levy against livestock, 46-1914**
- Boxing, sparring and wrestling exhibitions, tax on gross receipts, 82-308**
- Building or savings and loan associations, 84-7601
- Business trusts, 15-2507**
- Buyer of parcel of land, payment of tax, duties of department, 84-508
- Cattle protective district special levy, 46-2804**
- Cement dealers' license tax as lien, enforcement, 84-1108.1
- Change in assessment of property assessed to any particular person, notice of intention, 84-710**
- Changes in assessed valuation of classes of property, notice of contemplated action, 84-710**

INDEX

References are to Title and Section numbers

TAXATION (Continued)

Cigarette tax

amount of levy, 84-5606

appeals, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A

apportionment of proceeds among funds, 84-5606.30

building program, referendum on pledge of proceeds to, 79-2203

deductibility on federal income tax, 84-5606.1

definitions, 84-5606.2

department of revenue

appeal, 84-5606.25

assistants, employment of, 84-5606.30

hearings, 84-5606.23

investigative powers, 84-5606.23

powers and duties, 84-5606.26

rule-making power, 84-5606.27

suit by department for unpaid tax and costs, treble damages, 84-5606.29

direct tax on retail consumer, 84-5606

disposition of taxes, 84-5606.30

enforcement, duties of county attorneys and peace officers, 84-5606.28

insignia, affixing to package, 84-5606, 84-5606.7

face value recoverable from consumer or user, 84-5606.10

licensed wholesalers and retailers only to affix insignia, 84-5606.11

marking of imported packages required, 84-5606.13

resale of insignia prohibited, 84-5606.14

tax meter machines, 84-5606.13

tax meters, records concerning, 84-5606.17

unused meter settings, 84-5606.14

insignia, purchase of, 84-5606.12

insignia requirements, noncompliance a misdemeanor, 84-5606.18

insignia, time for payment for and affixing of, 84-5606.15

bond, 84-5606.15

interstate carrier's reports, 84-5606.20

misdemeanor penalties, 84-5606.31

nuisance, 84-5606.19

penalty for unpaid tax, 84-5606.16

personnel, employment, 84-5606.28, 84-5606.30

seized cigarettes, inventory of, 84-5606.22

state tax appeal board, appeals to, 84-5606.24

tax meter machines, 84-5606.13

unlawful transportation of cigarettes, 84-5606.21

vending machines, 84-5606.4

War Veterans' Compensation Fund abolished, 84-5606.30

wholesaler's, sub-jobber's, retailer's, and cigarette vendor's licenses, 84-5606.3

department of revenue, appropriation of funds for, 84-5606.6

display, 84-5606.5

fees, 84-5606.5

disposition, 84-5606.6

prohibition against unlicensed activities, 84-5606.8, 84-5606.9

renewal, 84-5606.5

revocation or suspension, 84-5606.8

violations, 84-5606.8, 84-5606.9

Cities and towns

all-purpose annual levy, 84-4701.1 to 84-4701.6

appeal procedures for taxpayer grievances, 1972 Const., VIII, 7

fire department relief association disability and pension fund, 11-1912

flood control indebtedness, 89-3312

police reserves, fund for payment of officers, 11-1823

property exempt from taxation, 1972 Const., VIII, 5

strict accountability for revenue received, 1972 Const., VIII, 12

Classification of property for taxation, 84-301

percentage basis for imposition of taxes, 84-302

INDEX

References are to Title and Section numbers

TAXATION (Continued)

- Coal gross proceeds tax, 84-1320 to 84-1325
 - annual statement of operator, 84-1320
 - failure to file or filing of false statement, penalty, 84-1324
 - gross proceeds reported by department to county assessor, 84-1321
 - levied as on other forms of taxable property, 84-1323
 - lien of tax, collection, 84-1323
 - preparation of tax roll, transmission to county treasurer, 84-1322
 - royalty as "value" in civil actions, 84-1325
 - royalty contracts for mining on state lands, value as contract sales price, 84-1325
- Coal mining severance tax imposed, 84-1314
 - definition of terms, 84-1313
 - delinquency in payment, penalty, lien, enforcement, 84-1316
 - exemption from tax, 84-1314
 - legislative findings and declaration of purpose, 84-1312
 - proceeds, distribution, 84-1319
 - quarterly statement of operator and payment of tax, 84-1315
 - rate of tax, value as basis, 84-1314
 - "value" defined, 84-1314
 - value determination, 84-1317, 84-1318
 - annual testing by bureau of mines and geology, 84-1317
 - value imputed, when authorized, procedure, 84-1318
- Coal retailers' license tax as lien, enforcement, 84-1408.1
- Collection of personal property tax by county treasurer, 84-4202
- Collection of taxes, duty of department, 84-723
 - certain delinquent taxes uncollectible and stricken from records, 84-4175.1
- Consumer counsel, special tax on revenues of regulated companies for, 1972 Const., XIII, 2
- Contiguous states, reciprocal agreements with, 84-708.1 (18)
- Contractors, license tax, 84-3501 et seq.—See PUBLIC CONTRACTORS, Licenses
- Corporate dissolution, tax clearance certificate, 15-2285
- Corporation income tax
 - administration by department of revenue, 84-6902
 - employment of personnel, 84-6907
 - change from license tax applicability, information return, 84-6905
 - citation of act, 84-6902
 - copy of return furnished taxpayer, 84-732
 - corporations subject to tax, 84-6901
 - federal obligations, exemption of income from, 84-6906
 - interstate commerce, application of tax to, 84-6903
 - election of tax on gross sales, rate, limitation, 84-6903
 - license tax provisions incorporated by reference, 84-6906,
 - offset for license tax paid, 84-6904
 - rate of tax, 84-6903
 - revenue from tax, disposition, 84-6908
 - rules and regulations, 84-6907
 - situs of property within state as basis for tax, 84-6903
- Corporation license tax
 - action by attorney general for collection of tax, 84-1505
 - alternative tax based on gross sales of corporations with income from sources within and without state, 84-1501
 - amount, 84-1501
 - assessment of tax, 84-1505
 - demand for immediate payment, 84-1505.2
 - building program, portion of tax proceeds pledged to, 79-2203
 - clearance certificate available to taxpayer, 84-733
 - disposition of fees collected, 84-734
 - returns to which act applies, 84-735
 - computation of tax, basis, 84-1504
 - "corporation" defined, 84-1501
 - deductions allowable in computing income, 84-1502

INDEX

References are to Title and Section numbers

TAXATION (Continued)

Corporation license tax (Continued)

- deficiency assessments
 - appeal to state tax appeal board, 84-1508.1
 - notice of assessment, mailing to taxpayer, 84-1508.1
 - protest of deficiency, procedure on, 84-1508.1
 - time within which assessment must be made, 84-1508.2
- disclosure of necessary facts, department requiring, 84-1508
- dissolution of corporation, liability for final year's tax, 84-1511
- effective dates, 84-1501.7
- election by small business corporation not to be subject to tax
 - definitions, 84-1501.1
 - dissolution of corporation, agreement by shareholder to assume personal liability required for election, 84-1501.3
 - effect of election, 84-1501.2
 - "electing small business corporation" defined, 84-1501.1
 - limitations upon right to election, 84-1501.2
 - method of making election, 84-1501.2
 - minimum fee, 84-1501.5
 - "small business corporation" defined, 84-1501.1
 - termination of election, 84-1501.2
 - validity of election, 84-1501.2
- exempt corporations, 84-1501
 - income tax, corporations subject to, 84-6901
 - information return filed when corporation becomes subject to income tax, 84-6905
- federal income tax return, 84-1517
- "fiscal year" defined, 84-1504
- "gross income" defined, 84-1504
- interest on delinquent payment, 84-1505
- levy on and sale of property for payment of tax, 84-1505
- "net income" defined, 84-1504
- new or expanding manufacturing corporations, tax credit for, 84-1520 to 84-1525
 - basis for credit, 84-1523
 - definition of terms, 84-1520
 - duties of department, 84-1524
 - eligible corporations, 84-1525
- offset for income tax paid, 84-6904
- overpayments of tax
 - disallowance for claim for refund, procedure on, 84-1508.2
 - interest on overpayments, 84-1508.1
 - refund or credit to be allowed on overpayment, 84-1508.1
 - time within which claim for refund or credit must be made, 84-1508.2
- public contractors, credit for additional license fees, 84-3514
- regulations for enforcement of act, 84-1508
- release of lien and discharge of property, 84-1505.1
- return, contents and filing, 84-1504
 - certified copies available to taxpayer, 84-732
 - disposition of fees collected, 84-734
 - returns to which act applies, 84-735
- failure to file or render information, penalty, 84-1516
- reviver of corporation after suspension or forfeiture for failure to pay, 84-1515
- state and national banks subject to tax, 84-1501.6
- taxable period to conform to federal taxable year, 84-1504
- time of payment, 84-1505
- violations, penalty, 84-1516
- water users' association exempt, 25-110
- witnesses, compelling attendance before board, 84-1508

County license taxes, disposition of proceeds, 84-2708

County tax appeal board, terms of members, meetings, equalization duties, per diem and expense, 84-601

County water district taxes—See COUNTY WATER AND SEWER DISTRICTS

Custom combiner's tax in lieu of other taxes, 84-6015

INDEX

References are to Title and Section numbers

TAXATION (Continued)

- Delinquent taxes, statement of county clerk to department, 84-4116
 - certain delinquent taxes uncollectible and stricken from record, 84-4175.1
- Department of revenue, 82A-1801 to 82A-1806—See DEPARTMENT OF REVENUE
 - change in assessed valuation of classes of property, notice and hearing, 84-710
 - change in assessment of property assessed to a particular person, notice of intention, 84-710
 - corporations transacting business in state, central reporting system to be established, 84-708.2
 - list of corporations, 84-708.4 to 84-708.8
 - rules and regulations, 84-708.3
 - powers and duties, 84-708.1
- Destruction of tax records authorized, procedure, 84-724
- Destruction of tax records more than thirty years old, 84-4175.2
- Disaster emergency tax, city-county, 11-4301 to 11-4306—See CITIES AND TOWNS, Disaster emergency tax; COUNTIES, Disaster emergency tax
- Ditches, canals and flumes operated in more than one county, assessment and apportionment, 84-708.1
 - annual assessment statement to department, 84-901
 - apportionment statement transmitted to counties, 84-906
 - statement of county agent to department, 84-902
- Electric power and transmission lines in more than one county, assessment and apportionment, 84-708.1
 - apportionment statement transmitted to counties, 84-906
 - statement of county agent to department, 84-902
 - statement of utility furnished to department, 84-901
- Energy conservation, tax incentives for investment in nonfossil forms of energy generation, 84-7401 to 84-7413—See ENERGY CONSERVATION, Tax incentives
- Equal valuation used throughout state, 1972 Const., VIII, 4
- Exemptions
 - agricultural products temporarily held in possession by producer, 84-202
 - airport authority property and income, 1-920
 - certain livestock, 84-202
 - constitutional provision for exemptions, 1972 Const., VIII, 5
 - fraternal benefit societies, 40-5343
 - freeport merchandise, definition, 84-202
 - game wardens' retirement benefits, 68-1420
 - household goods and wearing apparel, 84-202
 - investment in nonfossil energy generation, 84-202
 - irrigation and drainage facilities taxed as like federal and state facilities, 84-206
 - judges' retirement benefits, 93-1126
 - money and credits, 84-202
 - nursing homes operated not for profit, 84-202
 - perishable fruits and vegetables in farm storage, 84-202
 - teachers' retirement system benefits, 75-6215
 - unit ownership property, application of exemptions to, 67-2341
 - urban renewal property held by municipality, 11-3912
- Federal tax lien
 - execution of notices and certificates, 45-1502
 - fees for filing liens, 45-1504
 - filing officer, duties, 45-1503
 - place of filing of notices and certificates, 45-1501
 - previously filed liens, 45-1507
 - short title of act, 45-1506
 - uniformity of interpretation of act, 45-1505
- Freeport merchandise, classification for taxation, 84-301
- Freight line companies
 - proceeds of tax, disposition, 84-4825
 - refund claims, 84-4825
- Gasoline distributor's license tax
 - amount of tax, 84-1847

INDEX

References are to Title and Section numbers

TAXATION (Continued)

Gasoline distributor's license tax (Continued)

- aviation gasoline, amount of tax, 84-1847
 - definition of "aviation gasoline" and "aviation dealer," 84-1846
 - invoice of dealers, 84-1853
 - refund credit and evaporation allowance not applicable, 84-1849
 - unlawful use of gasoline as misdemeanor, 84-1855.1
 - bond of distributors, 84-1857
 - citation of act, 84-1845
 - collection of delinquent tax, 84-1858
 - definitions, 84-1846
 - delinquent payments and penalty, 84-1858
 - department to establish rules and regulations, 84-1861
 - distribution of state highway construction funds
 - bridge construction and reconstruction on Federal-aid system, special allocations for, 32-2604
 - districts for apportionment of funds, 32-2603
 - increase of expenditures in particular districts, 32-2610
 - interstate highway system, allocation of funds to, 32-2609
 - matching of federal funds, apportionment for, 32-2605
 - primary federal-aid system, allocation of funds for, 32-2606
 - secondary federal-aid system, allocation of funds for, 32-2607
 - urban federal-aid funds, allocation, 32-2611
 - invoice to be issued purchaser, 84-1853
 - license of distributors, 84-1857
 - revocation for noncompliance with act, 84-1858
 - lien for unpaid taxes, 84-1858
 - misdemeanor penalties, 84-1859
 - payment of tax, 84-1849
 - proceeds of tax, distribution and use, 32-2601
 - aeronautics commission, proceeds used for, 1-501
 - records of distributor
 - examination, 84-1850
 - inspection, 84-1852
 - period for which records to be preserved, 84-1851
 - refund of tax, 84-1855
 - refund permits, 84-1855
 - statement of distributor, 84-1849
 - statements concerning receipt of gasoline, 84-1854
 - penalty for failure to file, 84-1854
 - statute of limitations, 84-1860
 - timely mailing treated as timely filing and paying, 84-1856
- Hospital districts, additional levy authorized, 16-4309.1, 16-4309.2—See COUNTIES,
Public hospital districts
- House trailers, tax on, 84-6601 to 84-6607—See Mobile homes, below
- Imported beer, 4-324
 - proceeds of tax, disposition, 84-1901
- Income tax
 - adjusted gross income, definition, 84-4905
 - nonresident taxpayers, exclusions, 84-4907
 - amounts earned in partnership, 84-4911
 - certified copies of returns available to taxpayers, 84-732
 - disposition of fees collected, 84-734
 - returns to which act applies, 84-735
 - change of status from that of nonresident to resident, effect, 84-4915
 - change of status from that of resident to nonresident, effect, 84-4915
 - computation of amount, 84-4914
 - corporation income tax, 84-6901 to 84-6908—See Corporation income tax, above
 - credits for income taxes imposed by foreign states, 84-4937
 - definitions, 84-4901
 - delinquent returns and payments, penalties and interest added, 84-4924
 - dependency exemptions, 84-4910

INDEX

References are to Title and Section numbers

TAXATION (Continued)

Income tax (Continued)

- federally related income excluded from adjusted gross income, 84-4905
- federal returns, corrections and amended returns, filing requirements, 84-4938
- information agents' duties, 84-4913
- jeopardy assessments, 84-4928.1
- judicial review of departmental determination, 84-4923.1
- lien of tax, release or discharge of property from, 84-4958
- limitation on time for determining tax, suspension of running of statute, 84-4920.1
- military salaries exempt, 84-4907.2
- nonresident
 - ad valorem taxpayers, list, 84-4903.11
 - alternative tax based on gross sales, 84-4903
 - amounts withheld as lien against agent, 84-4903.9
 - amounts withheld considered funds held in trust, 84-4903.9
 - annual payment of withheld amount, when authorized, 84-4903.5
 - application to, 84-4903
 - county assessor, duties regarding, 84-4903.11
 - deductions restricted to those related to Montana income, 84-4907
 - exceptions from withholding requirements, 84-4903.3
 - exclusions from adjusted gross income, 84-4907
 - failure of agent to withhold or pay over to state, penalty, 84-4903.7
 - income subject to tax, 84-4903
 - loans made to nonresidents for grain on which chattel mortgage filed, list, preparation, 84-4903.12
 - modification of withholding provisions, 84-4903.6
 - personal and dependency exemptions prorated, 84-4910
 - quarterly payment by withholding agent, 84-4903.5
 - rents and royalties, rules requiring withholding on, 84-4903.2
 - requiring withholding agent to make return and pay tax, power of department, 84-4903.8
 - rights of nonresident, 84-4903.10
 - rules and regulations, power of department, 84-4903.13
 - transmittal of amount of withholding to department, 84-4903.2
 - withholding agent, 84-4903.4
 - withholding from payments to, 84-4903.2
 - withholding of amount of tax, authorized, 84-4903.1
- overpayment, credits and refunds, 84-4956
- partnership income, 84-4911
- penalties for violation of act, 84-4924
- personal exemptions, 84-4910
- persons moving out of state, 84-4915
- persons who must file return and pay tax, 84-4914
- political contribution allowed as deduction, amount, 84-4906.2
- "political contribution" defined, 84-4906.1
- public contractors, credit for additional license fees, 84-3514
- rate of tax, 84-4902
- refund of overpayments, 84-4956
- relocation assistance for persons affected by highway department's land acquisitions not income, 32-3930
- returns, 84-4914
- revision of return, when permitted, 84-4922
- appeal to state tax appeal board, 84-4922
- status changed from that of resident to nonresident, effect, 84-4915
- surtax, 84-4902.1
- temporary residents, deductions allowed to, 84-4907
- time for payment, 84-4914
- withholding, quarterly payment by employer, exception, 84-4946

Income tax surtax, 84-4902.1

Industrial development projects subject to tax, remedies against, 11-4108

Inheritance tax—See INHERITANCE TAX

Insurance premiums tax, 40-2821

 fire insurance, 82-1231

INDEX

References are to Title and Section numbers

TAXATION (Continued)

- Insurance premiums tax (Continued)
 - independently procured coverage, 40-3427
 - retaliatory tax provisions, 40-2826
 - surplus line premiums, 40-3420
 - penalty for failure to file or pay, 40-3421
- Irrigation and drainage facilities, when subject to taxation, 84-206
- Itinerant merchant's license tax, 3-3201 to 3-3215—See AGRICULTURE, Itinerant merchants
- Judgment, tax operating as, 84-3807
- Land classification and valuation, 84-7501 to 84-7526—See ECONOMIC LAND DEVELOPMENT ACT
- Land subject to conservation easement, 62-608
- Late filing of tax statement or return or late payment of tax, authority of department to waive penalty, 84-708.1 (17)
- Levy of taxes**
 - all-purpose exclusive levy by cities and towns
 - abandonment of method in future years, 84-4701.4
 - allocation of levy to departments of municipality, 84-4701.3
 - binding effect of election to use all-purpose levy, 84-4701.4
 - certification of levy to county officers, 84-4701.5
 - deposit of revenues from facilities in all-purpose general fund, 11-1414
 - extraordinary levies to pay bonded indebtedness and judgments authorized, 84-4701.6
 - maximum rate of levy, 84-4701.2
 - multiple-levy statutes not repealed, 84-4701.1
 - purpose of act, 84-4701.1
 - urban renewal plan, allocation of levy, 84-4701.3
 - constitutional provision for levies by general laws for public purposes, 1972 Const., VIII, 1
 - county poor fund levy, 71-222
 - county tax levy, 16-1015
 - county tax levy for construction, maintenance and repair of public ferries, 32-1518
 - elderly persons, local tax levy to support activities of, 71-1701
 - fire districts in unincorporated areas, levy for, 11-2008
 - flood control levy by county or municipality, 89-3312
 - limitation of actions and defenses relating to levy for payment of state and municipal bonds, 93-2612
 - soil conservation district assessment, 76-209
 - university system, property tax for, 84-3804
- Lien of tax operating as execution, 84-3807**
- Limitation of actions on claim for refund, 84-726**
- Liquor license tax proceeds, disposition, 84-1901**
- Livestock**
 - assessment of stock in feeding pens or enclosures, 84-406
 - bounty tax levy, 84-5214
 - levies for disease control and indemnification, predator control, inspection, protection, research and promotion, 1972 Const., XII, 1
 - maximum rate of tax, 84-5211
 - proceeds of tax, deposit and use, 84-5212
 - purposes for which proceeds used, 84-5211
 - statement of owner at time of assessment, 84-5201.1
 - penalty for violation, 84-5208
- Metalliferous mines**
 - amount of tax, 84-2004
 - collection of tax, procedure, 84-2008.1
 - commencement of business, notice to department, 84-2013
 - computation of tax, 84-2006
 - delinquent taxes, penalty, 84-2007
 - hearing before state tax appeal board, 84-2010
 - notice of tax, 84-2006

INDEX

References are to Title and Section numbers

TAXATION (Continued)

Mining net proceeds tax

- annual statement of operator, 84-5402
- assessment roll, 84-5408
- classification, 84-301
- computation, 84-5403
- extension of filing time, 84-5402
- lien of tax and penalty, 84-5405
- penalty for untimely filing, 84-5402
- valuation of net proceeds, transmission to county assessor, 84-5408

Mobile homes

- application of act to mobile homes and trailers subject to taxation, 84-6605
- assessment of property tax, time of, 84-406
- classification for taxation, 84-301
- definitions, 84-101, 84-6601
- fees in addition to registration and license fees, 32-3305
- highway checking of trailers, receipt to be produced, 84-6603
- moving of mobile home, declaration of destination required, procedure, 84-6606
- penalty for failure to display or produce declaration, sticker or receipt, 84-6604
- regulations of department, 84-6607
- stickers to show property tax paid, issuance and display required, 84-6602

Motor vehicle anniversary date registration, when property tax due, 53-159, 53-162

Motor vehicles

- assessment and registration provisions, 53-114, 84-406, 84-6008
- interstate fleets
 - apportionment on basis of in-state miles traveled, 84-727
 - assessment of property tax by department, 84-727
 - collection of tax by department, 84-730
 - cost of vehicle to be included in application for registration, 84-729
 - deposit and distribution of taxes, 84-731
 - partial year's tax, 84-727
 - rate of levy applied to fleet, 84-729
 - registration of fleet, payment of tax as condition precedent, 84-727
 - situs of vehicles in state for purposes of taxation, 84-730
 - valuation of fleet, method of computation, 84-728
- self-propelled by liquid petroleum gases, license tax on, 84-1862 to 84-1865—
See Motor vehicles self-propelled, below

Motor vehicles and motor fuels, taxing extends only to vehicles operated on public roads, 32-2124.2

- operation across public roads and highways not considered operation on roads, when, 32-2124.1

Motor vehicles self-propelled by liquid petroleum gases, license tax on, 84-1862 to 84-1865

- amount of tax, 84-1862
- nontransferable sticker issued upon payment of tax, 84-1862, 84-1863
- proceeds, disposition, 84-1865
- violations, penalties, 84-1864

Multistate Tax Compact, 84-6701 to 84-6704

- advisory committee, 84-6704
- abolition of committee, 82A-1806
- council appointed by board of equalization, 82A-1803
- state commissioner, 84-6702
- alternate, 84-6703
- text of compact, 84-6701

Natural gas tax

- assessment of operators and producers to pay expenses of conservation commission, 60-145
- collection of tax by county treasurer, 84-6208
- computation of tax by county assessor, 84-6208
- extension of filing time, 84-6202
- penalty for untimely filing, 84-6202
- withholding of tax from royalties, 84-6208

New industrial facilities, prepayment of tax may be required, recovery, 84-41-105

INDEX

References are to Title and Section numbers

TAXATION (Continued)

- New industrial property, classification, 84-301
- Oil and gas producers, failure to file statement of yield, penalty, 84-6202
- Oil or gas producers' severance tax imposed, 84-2202—See also Oil producers' license tax, in bound volume index
 - collection of tax, procedure, 84-2209.1
 - computation of tax, 84-2202
 - production statement forwarded quarterly to department of revenue with tax payment, 84-2207
 - rate of tax, 84-2202
- Parcel of land purchased, payment of tax by buyer, 84-508
- Pipelines, statement furnished to department by utility, 84-901
 - annual assessment statement to department, 84-901
 - apportionment statement transmitted to counties, 84-906
 - statement of county agent transmitted to department, 84-902
- Power to tax inalienable, 1972 Const., VIII, 2
- Privilege tax on tax-exempt property, 84-207 to 84-211
 - assessment, collection and distribution, 84-209
 - credit on use of federally owned property, 84-208
 - delinquent taxes, collection of, 84-210
 - exceptions, 84-207
 - rate, 84-208
- Produce wholesalers' license, 3-3301 to 3-3312—See AGRICULTURE, Produce wholesalers
- Property tax, levy for support of university system, 84-3804
- Property Taxpayers Information Act, 84-7201 to 84-7208
 - additional millage increase, readvertising and revoting required, 84-7207
 - department of revenue to certify taxable values and millage rates to each taxing authority, 84-7202
 - new construction and improvements, statement of total assessed value to be provided, 84-7202
 - exceptions for decisions of tax appeal boards, 84-7206
 - increase of tax revenue, advertising of intention required, 84-7203
 - increase over legal maximum not authorized, 84-7208
 - reduction of millage rate not prohibited, 84-7208
 - resolution or ordinance for increase of certified millage, notice, 84-7204
 - copies of resolution or ordinance, distribution, 84-7205
 - title of law, 84-7201
- Protest payment of license fees, procedure after, 84-4501
- Public contractors' license tax, 84-3501 et seq.—See PUBLIC CONTRACTORS, Licenses
- Public library federations, special tax levy to be submitted to voters, 84-3804 (2)
- Public property subject to taxation when subject to sale contract or option to purchase, 84-204
 - valuation and assessment of property, 84-205
- Railroads
 - appeal of assessment to state tax appeal board, 84-802.1
 - assessment and apportionment to counties, 84-708.1
 - entry of assessment on assessment roll, 84-803
 - statement of assessment transmitted by department to counties, 84-803
- Rate of tax determined annually by governor, 84-713
- Realty Transfer Act, 84-7301 to 84-7311
 - certificate of transfer required for recording of instruments of transfer, 84-7305
 - change of ownership records not required without certificate, 84-7304 (2)
 - contract for deed, certificate required, 84-7305
 - executed certificates transmitted to department, 84-7305
 - form of certificate prescribed by department, 84-7305 (3)
 - validity of instrument unaffected by noncompliance, 84-7305 (2)
 - confidentiality of information contained in certificate, 84-7308
 - costs imposed on local government as part of normal operating procedures, 84-7311

INDEX

References are to Title and Section numbers

TAXATION (Continued)

Realty Transfer Act (Continued)

- definition of terms, 84-7303
- existing classification or assessment methods unaffected, 84-7309 (1)
- penalty for violation, 84-7310
- purpose of act, 84-7302
- rules, adoption by department authorized, 84-7306
- sale price not sole determinant of assessed value, matters considered, 84-7309 (2)
- short title, 84-7301
- transactions exempt from certificate requirements, 84-7307
- unrecorded transfers to be reported to department of revenue, 84-7304 (1)
- Reciprocal agreement with other states by department authorized, 84-708.1 (18)
- Records of taxation, destruction authorized by state board, 84-724

Refund of overpayments, 84-726

- Resource indemnity trust account tax, Const., IX, 2; 84-7001 to 84-7013
 - account created in trust and legacy fund, 84-7004
 - deposit of tax receipts in fund, 84-7008
 - expenditures, 84-7009
 - investment of fund, 84-7009
 - minimum balance to be maintained, 84-7009
 - use of fund, purpose, 84-7010
 - definition of terms, 84-7003
 - gross mineral yield, statement to be filed annually, contents, 84-7005
 - confidentiality of information, 84-7013
 - failure to file statement, tax determination by department, 84-7012
 - "mineral" defined, 84-7003
 - legislative policy, 84-7002
 - short title, 84-7001
 - tax on mineral production to be paid annually, amount, 84-7006
 - deposit of tax proceeds, 84-7008
 - effective date of tax, 84-7011
 - receipt for tax, 84-7008
 - time for payment, 84-7007

Retirement benefits, classification, 84-301

Royalty interests, 84-5409

Rural co-operatives tax, functions with respect to transferred to department of revenue, 82A-1802

Sales tax on motor vehicles, proration for registration period other than calendar year or quarter, 32-3315 (2) (a)

Sewer service rates, collection of current and delinquent charges, 84-4726.1

Sleeping car company's license tax, definition of terms, 84-2301

Snowmobiles

- annual issuance of decal, 53-1026
- application for decal, 53-1025
- definition of terms, 53-1024
- enforcement powers of officers, 53-1028
- penalty for failure to display decal, 53-1027
- property tax assessment, 84-406 (5)
- tax-paid decal required, 53-1025

Special fuel dealers and users

- amount of tax, 84-1832.1
- bond required of dealers and users, 84-1833
- credits allowed, 84-1836, 84-1837
- definition of terms, 84-1831
- examination of records, 84-1838
- lien of tax on property of dealer or user, 84-1833
- proceeds of tax, disposition, 84-1840
- railroad grade crossing protection, allocation of funds for, 84-1840.1
- returns required, filing date, 84-1835
- temporary permits to unlicensed users
 - agricultural harvesting equipment of nonresident, permit required, fee, 84-1842, 84-1843
 - fees, 84-1843

INDEX

References are to Title and Section numbers

TAXATION (Continued)

- Special fuel dealers and users (Continued)
 - temporary permits to unlicensed users (Continued)
 - issuance of permit, 84-1842
 - penalty for operation without permit, 84-1844
 - time of attachment of tax, 84-1832
 - time of collection, 84-1832.1
- Special improvement districts authorized, 1972 Const., VIII, 5
- State department of revenue
 - audit of taxable values, costs charged to counties, 84-708.9
 - powers and duties generally, 84-708.1
 - utility properties, annual assessment and apportionment to counties, 84-708.1
- State property subject to taxation when subject to sale contract or option to purchase, 84-204
 - valuation and assessment of property, 84-205
- State tax appeal board created, composition, terms of members, filling of vacancies, 84-701
 - appeal to board, hearing, reference authorized, record of proceedings, 84-709
 - continuous session, 84-703
 - definitions, 84-704
 - expenses limited, 84-705
 - interlocutory adjudication in district court pending proceedings before board, requirements, jurisdiction, 84-709.2, 84-709.3
 - judicial review, 84-709.1
 - minutes of proceedings, 84-705
 - office, furnishings and supplies, 84-706
 - organization of board, 84-703
 - personnel, employment, 84-705
 - powers and duties, 84-708
 - qualifications and compensation of members, 84-702
 - quorum, 84-703
 - rules, adoption authorized, 84-705
 - transfer of board to department of administration for administrative purposes, 84-702
- State to appraise, assess, and equalize valuation of property, 1972 Const., VIII, 3
- Store license tax, vending machines excepted, 84-2410
- Suspense account for receipts and refunds, 84-725
- Tax records more than thirty years old, destruction, 84-4175.2
- Telegraph and telephone lines operated in more than one county, assessment and apportionment, 84-708.1
- Telegraph or telephone microwave electronic equipment, assessment and apportionment, 84-708
- Tobacco tax (cigarettes excluded), 84-6801 to 84-6807
 - definitions, 84-6801
 - defrayment of wholesaler's expenses, 84-6806
 - department of revenue, rule-making power, 84-6807
 - direct tax on consumer, 84-6802
 - refunds, 84-6806
 - unlawful sales, 84-6804, 84-6805
 - wholesaler's duties, 84-6802, 84-6803
- University system and other board of regents institutions, tax levy for, 84-3804
- Unprocessed agricultural products, classification, 84-301
- Utility properties operated in more than one county, annual assessment and apportionment, 84-708.1
- Veterans, classification of disabled veteran's dwelling house for taxation, 84-301
- Wheat, assessment on annual crop when sold, 3-2911 to 3-2913

TELEPHONE AND TELEGRAPH

- Criminal mischief causing interruption or impairment of service, punishment, 94-6-102(2)
- Financing statements of utility, contents and place of filing, 87A-9-302.2
 - definition of terms, 87A-9-302.1
- Uniform Commercial Code, application, 87A-9-302.3

INDEX

References are to Title and Section numbers

TELEPHONE AND TELEGRAPH (Continued)

Overhead lines relocated for installation of agricultural improvement, 24-201 to 24-204
—See PUBLIC UTILITIES, Overhead utility lines

Taxation

annual statement to department, 84-901
license tax proceeds, disposition, 84-1901
microwave electronic equipment, assessment and apportionment, 84-708

Underground facilities, conversion to, 70-601 to 70-635—See PUBLIC UTILITIES,
Underground conversion

Underground facilities protected from excavations, 32-4801 to 32-4808—See STREETS,
Underground facility

Underground power lines when feasible in new service areas, 70-304
implementation by public service commission, 70-304
“new service area” defined, 70-304

TELETYPEWRITER COMMUNICATIONS SYSTEM

See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS,
82-3901 to 82-3906

TELEVISION

Defamatory statements, notice to broadcaster and opportunity to correct, 64-207.1

Districts

abandonment of district, disposition of property and funds, 70-425
annexation of contiguous areas to district, 70-426
areas includible in district, 70-410
assessor to list television owners within district, 70-417
budget for district, preparation and presentation, 70-418
cable systems not within purpose of district, 70-408
filing of order creating district, 70-415
funds, disbursement, 70-419
hearing on formation of district, 70-414
naming of district, 70-415
organization of districts authorized, 70-409
petition to form district, contents, 70-411
filing and transmission of petition to county commissioners, 70-412
powers of districts, 70-420
publication of petition and notice of meeting to consider, 70-413
purposes for which districts authorized, 70-408
resolution creating district or denying petition, 70-414
tax on television sets, levy, 70-418
exemption of taxpayers who do not benefit from translator, 70-422
false or fraudulent claim for exemption, misdemeanor, 70-424
treasurer of district, 70-419
trustees of district
appointment and terms, 70-416
expenses, reimbursement, 70-421
meetings of trustees, 70-423

Educational broadcasting, 75-9001 to 75-9004—See EDUCATIONAL RADIO AND
TELEVISION

Educational television

educational broadcasting commission, existence and composition, appointment and
terms of members, 82A-511
allocated to state board of education for administrative purposes, exception,
82A-511(4)

Freedom of speech, expression, and the press, 1972 Const., II, 7

Information sources protected from disclosure, 93-701-4

Publication of notice supplemented by broadcast, 19-201
copy of transcript to be retained by broadcasting station, 19-202
proof of broadcast, 19-203

TERMS OF COURT

Expiration, effect on time limitation in civil proceedings, M. R. Civ. P., Rule 6(c)

INDEX

References are to Title and Section numbers

THEATERS

Sanitary inspections and correction of conditions by boards of health, 69-4118

THEFT

Burglary, 94-6-204—See BURGLARY

Commencement of prosecution, time limitations, 94-1-106

breach of fiduciary obligation, extension of time, 94-1-106 (3)

Definitions, 94-2-101, 94-6-301

"Deprive" defined, 94-2-101(13)

Fraud and deceit, theft by, 94-6-307 to 94-6-313

bad check offenses, 94-6-309

chain distributor schemes unlawful, definitions, punishment, 94-6-308.1

deceptive business practices, acts constituting offense, punishment, 94-6-308

deceptive practices, acts constituting offense, punishment, 94-6-307

defrauding secured creditors, punishment, 94-6-313

forgery, 94-6-310—See FORGERY

illegal branding or altering or obscuring a brand, punishment, 94-6-312

obscuring the identity of a machine, acts constituting offense, punishment, 94-6-311

Gambling or tricks, obtaining money by means of as larceny, 94-8-405

Interest of offender in property no defense, 94-6-306

Labor or services, obtaining temporary use of as theft, elements of offense, punishment, 94-6-304

Lost or mislaid property, obtaining control as theft, elements of offense, punishment, 94-6-303

Married persons, theft from spouse no defense, exception, 94-6-306

Motor vehicles, unauthorized use of, elements of offense, punishment, 94-6-305

reasonable belief that owner would have consented as defense, 94-6-305

"Obtains or exerts control" defined, 94-2-101(34)

"Owner" defined, 94-2-101(41)

"Possession" defined, 94-2-101(47)

"Property" defined, 94-2-101(49)

"Property of another" defined, 94-2-101(50)

Robbery, 94-5-401—See ROBBERY

Temporary use of property, labor or services, obtaining as theft, elements of offense, punishment, 94-6-304

Unauthorized control over property of owner as theft, elements of offense, punishment, 94-6-302(1)(4)

control obtained by threat or deception, 94-6-302(2)

punishment, 94-6-302(4)

stolen property, obtaining control over, 94-6-302(3)

possession of stolen property, evidentiary effect, 94-6-314

"Value" defined, 94-2-101(64)

TIMBER

See FORESTS AND FORESTRY

TIME

Computation of time allowed in civil proceedings, M. R. Civ. P., Rule 6(a)

Extension of time allowed in civil proceedings, M. R. Civ. P., Rule 6(b)

Term of court, effect on limitations in civil proceedings, M. R. Civ. P., Rule 6(c)

TORTS

Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623

Licensees for recreational purposes, landowner's restricted liability to, 67-808

definition of recreational purposes, 67-809

Medical malpractice, statute of limitations, 93-2624

Sovereign immunity abolished, 1972 Const., II, 18; 83-706.1

Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

TOURIST CAMPS

Definition, 69-5601

INDEX

References are to Title and Section numbers

TOURIST CAMPS (Continued)

- Inspection of grounds by state and local officers, 69-5605
 - operators to permit inspections, 69-5603
- License required for operation, 69-5603
 - application for license, 69-5604
 - cancellation or denial of license, grounds, procedure, 69-5606
 - expiration of license, 69-5604
 - fee for license, 69-5604
- Penalties for violations, 69-5607
- Rules for operation adopted by department, 69-5602
 - posting of rules, 69-5603

TOWNSHIPS

- Deferred compensation plan for employees authorized, 68-2701 to 68-2709—See DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES
- Gambling offenders, officer receiving money or thing of value for protection as felony, 94-8-417
- Mileage allowances to officers for use of own vehicles, 59-801
 - Officers, 16-2404

TRADE-MARKS

- Indian articles, regulations for sale of imitation articles, 85-301 to 85-304
- Recording of trade-marks by secretary of state, 85-103
 - fees of secretary of state, 25-102

TRAILER COURTS

- See TOURIST CAMPS

TRAMWAYS

- See PASSENGER TRAMWAYS, 69-6601 to 69-6617

TREASON

- Requirements for conviction, effect of conviction, attainder of treason by legislature prohibited, 1972 Const., II, 30
- Venue of prosecution, 95-412

TRESPASS

- Criminal trespass
 - "enter or remain unlawfully" defined, 94-6-201
 - "occupied structure" defined, 94-2-101(35)
 - "property of another" defined, 94-2-101(50)
 - property, trespass to, elements of offense, punishment, 94-6-203
 - vehicles, trespass to, elements of offense, punishment, 94-6-202
 - "vehicle" defined, 94-2-101(65)

TRIALS

- Assignment of cases for trial, M. R. Civ. P., Rule 40
- Calendar for trial, placement of actions, M. R. Civ. P., Rule 40
- Consolidation of actions for trials, M. R. Civ. P., Rule 42(a)
- Criminal cases, 95-1901 to 95-1916—See CRIMINAL PROCEDURE, Trials
- Exceptions to rulings of court unnecessary, M. R. Civ. P., Rule 46
- Findings by court, separate statement, M. R. Civ. P., Rule 52(a)
- Hostile witnesses, examination as on cross-examination, M. R. Civ. P., Rule 43(b)
- Instructions to jury, M. R. Civ. P., Rule 51
- Jury trial
 - advisory jury, M. R. Civ. P., Rule 39(c)
 - court ordering jury trial, M. R. Civ. P., Rule 39(b)
 - demand for jury trial, M. R. Civ. P., Rule 38(b)
 - issues, designation for jury trial, M. R. Civ. P., Rule 38(c)
 - right to jury trial in civil cases, M. R. Civ. P., Rule 38(a)
 - right to jury trial in criminal cases, 95-1901, 95-2004
 - summoning of jurors, 93-1509
 - waiver of right to jury trial, M. R. Civ. P., Rule 38(d)

INDEX

References are to Title and Section numbers

TRIALS (Continued)

- Open court trials required, M. R. Civ. P., Rule 77
- Separation of claims for trials, M. R. Civ. P., Rule 42(b)
- Summoning of jurors, 93-1509**

TRUST INDENTURES

- Acceleration provisions not applied when grantor cures default, 52-412
- Authorization of trust indentures, 52-404
- Charitable trusts treated as private foundation or split-interest trust under federal tax laws, amendment of trust instrument to terminate tax treatment, 86-707(2)
- Citation of act, 52-401
- Deficiency judgment not allowed after foreclosure by advertisement and sale, 52-414
- Definition of terms, 52-403
- Foreclosure
 - attorney's fees allowed on foreclosure, 52-416
 - deed given by trustee after sale, contents and effect, 52-410
 - deficiency judgment not allowed after foreclosure by advertisement and sale, 52-414
 - discontinuance of proceedings on payment of amount in default, 52-412
 - fees allowed on foreclosure, 52-416
 - notice of sale by trustee
 - affidavits of mailing, posting and publication, recording, 52-409
 - cancellation on cure of default before sale, 52-412
 - mailing, posting and publication of notice, 52-409
 - recording of notice, 52-408
 - requests for copies of notice, recording, 52-415
 - parcels in which sold, 52-409
 - payment of price bid in cash, 52-409
 - possession of property, when purchaser at trustee's sale entitled to, 52-411
 - postponement of sale, 52-409
 - proceeds of sale by trustee, disposition, 52-413
 - real estate brokers' act inapplicable to sale by trustee, 66-1926
 - refusal of successful bidder to pay purchase price, 52-409
 - required conditions for foreclosure by advertisement and sale, 52-408
 - sale to highest bidder, 52-409
 - time within which proceedings to be commenced, 52-407
- Mortgage laws, application to indentures, 52-417
- Policy of state declared, 52-402
- Power of sale implied in indenture, 52-404
- Qualifications of trustee, 52-405
- Reconveyance to grantor on performance of obligation secured, 52-406
- Short title of act, 52-401
- Size of tract for which indenture authorized, 52-404
- Substitution for previously existing mortgage prohibited, 52-404
- Successor trustee, appointment, filing, 52-405

TRUST RECEIPTS

See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507

TRUSTS AND TRUSTEES

- Action brought without joining beneficiaries as parties, M. R. Civ. P., Rule 17(a)
- Business corporations, voting trusts, 15-2232
- Business trusts, 15-2501 to 15-2508—See BUSINESS TRUSTS
- Charitable trusts treated as private foundation or split-interest trusts under federal tax laws, prohibited acts of trustee, 86-707(1)
 - amendment of trust instrument terminating tax treatment, 86-707(2)
- Compensation of trustee, 86-511
- Devise or bequest in will to trustee of inter vivos trust established by testator
 - effect of entire revocation of trust prior to death, 91-321
 - property not deemed held under testamentary trust, 91-321
 - validity, 91-321
- Equipment trusts, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS

INDEX

References are to Title and Section numbers

TRUSTS AND TRUSTEES (Continued)

Institutional funds management, 86-801 to 86-809—See **MANAGEMENT OF INSTITUTIONAL FUNDS**

Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327

Married person as trustee, 36-127

Massachusetts trust, 15-2501 to 15-2508—See **BUSINESS TRUSTS**

Pension trusts, statutory or common-law rules relating to restraint against alienation, suspension of power of alienation, accumulation of income, perpetuities or remoteness of vesting, not applicable to, 67-423

Principal and income act—See **PRINCIPAL AND INCOME ACT**

Real estate brokers' act inapplicable to trustees, 66-1926

Rules of civil procedure, application in administration, M. R. Civ. P., Rule 81(a), Table A

Statement of trustee to income trust beneficiary, 86-513

Subsidiary Trust Company Act of 1975, 5-1501 to 5-1508—See **BANKS AND BANKING**, Subsidiary Trust Company Act

Testamentary trustee as successor entitled to distribution, 91A-3-912, 91A-3-913

Trustees' Powers Act, 86-901 to 86-911

conflict of interest requiring judicial authorization of exercise of trustee's powers, 86-906(2)

construction to effectuate uniformity, 86-909

definition of terms, 86-902

delegation of trustee's entire duties prohibited, 86-905

effective date of act, trust assets affected, 86-908

incorporation of provisions of act by reference in instrument not otherwise creating trust, 86-903(2)

judicial power over trust unaffected, 86-906

multiple trustees, exercise of power by majority, 86-907(1)

co-trustee not excused from liability for failure to exercise or for breach of trust, 86-907(3)

immunity from liability of trustee not joining in exercise of power, 86-907(1)

surviving or remaining trustees performing trust, 86-907(2)

powers of trustee, 86-903, 86-904

"prudent man" defined, 86-902(3)

repealing clause, 86-911

severability of provisions, 86-901

short title, 86-910

transfer of trustee's office prohibited, exception, 86-905

"trust" defined, 86-902(1)

"trustee" defined, 86-902(2)

Validity, 67-424

Wills, devises to trust, 91A-2-511

"trust" defined, 91A-1-201 (45)

TUBERCULOSIS

Commitment to hospital for diagnosis and treatment

court costs, expenses and fees, payment by county, 69-4315

detention at hospital of person committed, 69-4311

failure to submit to examination as cause for commitment, 69-4309

maintenance and treatment expense, rate, 69-4316

order of commitment forwarded to hospital and board of health, 69-4310

release from commitment to hospital, 69-4313

court order for release, 69-4312

transfer between hospitals of person committed, 69-4314

transportation expenses, payment by county, 69-4316

warrant directed to sheriff, 69-4310

Definition of terms, 69-4302

Departmental powers and duties, 69-4304

Examination of suspected cases ordered by district court

application for court order, contents, 69-4306

commitment to hospital on failure to submit to examination, 69-4309

court costs, expenses and fees, payment by county, 69-4315

INDEX

References are to Title and Section numbers

TUBERCULOSIS (Continued)

- Examination of suspected cases (Continued)
 - findings and order of court, 69-4308
 - hearing on application, procedure, 69-4307
- Facilities for treatment maintained by state hospital, 69-4317
- Federal funds, acceptance and use, 69-4304
- Galen State Hospital as facility to carry out provisions, 69-4317
- Policy of state, 69-4301
- Rules for determination of communicable state, 69-4303
- Suspected cases of tuberculosis, application for examination or commitment, 69-4305

U

UNCLAIMED PROPERTY

- See PROPERTY, Unclaimed property, 67-2201 to 67-2230

UNDERTAKERS

- See MORTICIANS AND FUNERAL DIRECTORS, 66-2701 to 66-2717

UNEMPLOYMENT COMPENSATION

- Account in agency fund
 - custodian of account, 87-112
 - establishment of account, 87-111
 - moneys paid into account, 87-111
 - subaccounts, enumeration and use, 87-112
- Administration account in federal and private revenue fund, sources and use, 87-133
- Benefits
 - disqualification for benefits, 87-106
 - duration of benefits, 87-104
 - eligibility conditions, 87-105
 - extended benefits, 87-104, 87-128
 - qualifying wages, 87-103
 - reciprocal arrangements with other states or United States, 87-129
 - weekly benefit amounts, 87-103
- Contributions by employers
 - levy and sale for collection of contributions, 87-139
 - maximum wages used as basis for contributions, 87-109
 - review of decision on liability, appeal, 87-109
 - schedule of contributions, 87-109
- Co-operation with federal government, 87-128
- Definition of terms, 87-148, 87-149
- Division of employment security created, 82A-1006
 - bureaus created, purpose, 87-118
 - functions of division, 82A-1007
 - office building on capitol grounds, 78-1001 to 78-1020—See STATE CAPITOL, Employment security commission building
 - powers and duties, 87-120
 - reporting requirements, 82-4002, 87-120
 - service buildings outside capitol area
 - architect, employment, 78-1022
 - bids for construction contracts, 78-1023
 - bond issue authorized, 78-1021
 - amount of bonds, 78-1024
 - interest and sinking fund, 78-1028
 - interest rate on bonds, 78-1025
 - payments of principal and interest, 78-1027
 - purchase of bonds by board of land commissioners, 78-1029
 - registration of bonds, 78-1026
 - sale of bonds, 78-1026
 - terms and provisions of bonds, 78-1025
 - budget act not applicable, 78-1030
 - contractor's bond, 78-1023
 - design of buildings, 78-1022
 - purchase of land for buildings authorized, 78-1021

INDEX

References are to Title and Section numbers

UNEMPLOYMENT COMPENSATION (Continued)

- Extended benefits, co-operation with federal government, 87-104, 87-128
- Federal moneys paid into administration account, 87-133
 - disbursements if federal act becomes inoperative, 87-114
- Higher education institutions operated by political subdivisions, election of coverage of employees in, 87-110
- Hospitals operated by political subdivisions, election of coverage of employees in, 87-110
- Penalties for violations, 87-145
- Reciprocity in collection of unpaid contributions, 87-136
- Rules of civil procedure, application to review of orders, M. R. Civ. P., Rule 81(a), Table A
- Secretary of labor, approval of act by, 87-152

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

- Assurance of voluntary compliance, acceptance by department authorized, filing, formal requirements, 85-409
- Consumer reporting agencies, certain violations as unfair trade practices, 18-521
- County attorney to assist department in commencement and prosecution of actions, 85-416
 - employee as full-time investigator, 85-417
- Definition of terms, 85-401
- Dissolution or forfeiture of corporate franchise for violation, 85-414, 85-415
- Exempt acts and transactions, 85-404
- Fraudulent course of conduct, punishment, 85-414
- Hearings by department authorized, 85-411
- Injunction proceedings by department to restrain unlawful acts authorized, 85-405
 - additional orders or judgments authorized, 85-406
 - receiver, appointment, 85-406, 85-407
 - persons having suffered damages as claimants, 85-407
 - powers of receiver generally, 85-407
 - scope of receivership generally, 85-407
 - restoration of moneys or property to person injured, 85-406
 - revocation of license or certificate to do business, 85-406
 - venue of action, 85-405
 - violation of injunction, civil penalties, 85-414
- Investigative demands relating to unlawful practices served by department, return date, extension, 85-410
- Judicial enforcement of department orders, relief available, 85-413
- Oaths, administration by department, 85-411
- Private actions for damages by persons suffering loss, amount of recovery, 85-408 (1)
 - attorney fees recoverable, 85-408 (3)
 - class actions not authorized, 85-408 (1)
 - judgment or decree in state proceedings as prima facie evidence, 85-408 (4)
 - judgment or decree mailed to department and county attorney, 85-408 (2)
- Process, when substitute service authorized, 85-412
- Rules and regulations having force of law, 85-411
- Subpoena power of department, 85-411
- Title of law, 85-418
- Unfair competition and deceptive practices unlawful, 85-402
 - federal interpretations given weight, 85-403
 - interpretive rules of department, consistency with federal interpretations required, 85-403

UNIFORM COMMERCIAL CODE

- Acceleration of performance, good faith required in exercising option, 87A-1-208
- Actions permitted to enforce rights and obligations, 87A-1-106
- Agreement as to which state's laws apply, 87A-1-105
- Agreement to vary terms of code, 87A-1-102
- Authenticity of third-party documents presumed, 87A-1-202
- Bank deposits and collections, 87A-4-101 to 87A-4-504—See BANKS AND BANKING, Deposits and collections

INDEX

References are to Title and Section numbers

UNIFORM COMMERCIAL CODE (Continued)

- Bills of lading, 87A-7-101 to 87A-7-105, 87A-7-301 to 87A-7-603—See **BILLS OF LADING**
- Bulk transfers, 87A-6-101 to 87A-6-111—See **BULK TRANSFERS**
- Captions as part of act, 87A-1-109
- Citation of act, 87A-1-101
- Commercial paper, 87A-3-101 to 87A-3-805—See **COMMERCIAL PAPER**
- Conflict of laws, 87A-1-105
- Course of dealing between parties, application, 87A-1-205
- Damages, principles for measurement, 87A-1-106
- Definition of terms in general, 87A-1-201
- Documents of title, 87A-7-101 to 87A-7-603—See **BILLS OF LADING; WAREHOUSE RECEIPTS**
- Effective date, 87A-10-101
- Gender of words used, interchangeability, 87A-1-102
- Good faith obligation imposed, 87A-1-203
- Investment securities, 87A-8-101 to 87A-8-406—See **INVESTMENT SECURITIES**
- Letters of credit, 87A-5-101 to 87A-5-117—See **LETTERS OF CREDIT**
- Liberal administration of remedies, 87A-1-106
- Mortgage law, conflicts with, 52-117
- Plural includes singular, 87A-1-102
- Policies of act, 87A-1-102
- Prior transactions, application of prior law to, 87A-10-102
- Purposes of act, 87A-1-102
- Renunciation of claim or right without consideration, 87A-1-107
- Repeal of code provisions not to be implied, 87A-1-104
- Reservation of rights by party while performing or assenting to performance, 87A-1-207
- Sale of goods, 87A-2-101 to 87A-2-725—See **SALES**
- Saving of certain laws from repeal by code, 87A-10-103
- Secured transactions, 87A-9-101 to 87A-9-507—See **SECURED TRANSACTIONS**
- Severability of provisions, 87A-1-108
- Short title, 87A-1-101
- Singular includes plural, 87A-1-102
- Storage deposits, applicability to, 20-314
- Supplementary general principles of law applicable, 87A-1-103
- Territorial application by agreement, 87A-1-105
- Time allowed for required actions, 87A-1-204
- Transitional provisions, 87A-10-102
- Usage of trade, application, 87A-1-205
- Variation of terms by agreement, 87A-1-102
- Waiver of claim or right without consideration, 87A-1-107
- Warehouse receipts, 87A-7-101 to 87A-7-210, 87A-7-401 to 87A-7-603—See **WAREHOUSE RECEIPTS**

UNIFORM CRIMINAL EXTRADITION ACT

- Accused person's rights to be observed, 95-3110
 - arrest upon affidavit without requisition, 95-3113
 - arrest without warrant, requirements for, 95-3114
 - bail, when allowed, 95-3115, 95-3116
 - commitment to await requisition, 95-3115
 - extension of commitment period, 95-3117
 - forfeiture of bail, 95-3118
 - taking of accused before court, informing of rights, 95-3110
 - willful disobedience by officer as misdemeanor, punishment, 95-3111
- Confinement of accused in jail when necessary, 95-3112
- Definitions, 95-3101
- Demand for extradition, formal requirements, 95-3103
 - investigation of demand, 95-3104
- Expense of person returning fugitive, allowance and payment, 95-3124.1
- Fugitive from another state, duty of governor, 95-3102
- Fugitive from this state, issuance of warrant by governor, 95-3122
 - application and issuance of requisition, 95-3123

INDEX

References are to Title and Section numbers

UNIFORM CRIMINAL EXTRADITION ACT (Continued)

- Fugitive from this state (Continued)
 - officer procuring demand or surrender, fee for services prohibited, violation as misdemeanor, 95-3125, 95-3126
 - person returning prisoner, audit of accounts, payment, 95-3124
- Guilt or innocence of accused not subject to inquiry, 95-3120
- Habeas corpus, accused to be allowed to apply for writ of, 95-3110
- Immunity of certain fugitives from service of civil process, 95-3127
 - no immunity from other criminal prosecutions, 95-3130
- Persons imprisoned or awaiting trial in another state, extradition to this state, return, 95-3105
- Persons not present in demanding state at time of commission of crime, 95-3106
- Persons under prosecution in this state at time of requisition, 95-3119
- Persons under prosecution in this state, extradition to demanding state, 95-3105
- Waiver of extradition by accused, procedure, 95-3128
 - nonwaiver by state by acts or provisions of law, 95-3129
- Warrant, issuance by governor, 95-3107
 - alias warrant, when issued by governor, 95-3121
 - authority of arresting officer, 95-3109
 - execution of warrant, 95-3108

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

See PROPERTY, Unclaimed property, 67-2201 to 67-2230

UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACT

See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

UNIFORM MACHINE GUN ACT

See FIREARMS

UNIFORM PARENTAGE ACT

See PARENT AND CHILD, Uniform Parentage Act

UNIFORM PRINCIPAL AND INCOME ACT

Text, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

UNIFORM PROBATE CODE

- Application of code generally, 91A-1-301
- Closing of decedent estate, 91A-3-1001 to 91A-3-1010—See PROBATE AND ADMINISTRATION PROCEEDINGS, Closing of estate
- Conflict with prior statutes, code provisions take precedence, 91A-6-104
- Contracts concerning succession, how established, 91A-2-701
- Contracts to make or revoke will or devise, or to die intestate, how established, 91A-2-701
- Courts, jurisdiction and scope of proceedings under code, 91A-1-301 to 91A-1-309
 - appeals, statutes and rules applicable, 91A-1-308
 - certified copies of records, issuance, fee, formal requirements, 91A-1-305
 - clerk of court, duties and powers performable by judge, 91A-1-307
 - filed documents deemed to include oath, affirmation or authenticating statement, deliberate falsification as false swearing, 91A-1-309
 - guardian ad litem, appointment by court, formal requirements, 91A-1-403 (4)
 - jurisdiction of courts, 91A-1-301, 91A-1-302
 - subject matter jurisdiction, 91A-1-302
 - territorial jurisdiction, 91A-1-301
 - jury trial, when available, 91A-1-306
 - notice, method and time of giving, waiver, 91A-1-401, 91A-1-402—See also NOTICES, Uniform Probate Code
 - requirements for notice, 91A-1-403 (3)
 - orders of court, persons bound by, 91A-1-403
 - pleadings, binding effect, applicable rules, 91A-1-403

INDEX

References are to Title and Section numbers •

UNIFORM PROBATE CODE (Continued)

Courts, jurisdiction and scope of proceedings (Continued)

record of proceedings to be kept by clerk of court, 91A-1-305

rules of civil procedure, application, 91A-1-304—See also CIVIL PROCEDURE

venue of proceedings, 91A-1-303

multiple proceedings, determination of proper venue, transfer, 91A-1-303 (2)

transfer of proceedings to proper venue, 91A-1-303 (2), (3)

Creditors' claims, 91A-3-801 to 91A-3-816—See DECEDENTS' ESTATES, Creditors' claims

Death

fact of death in doubt, procedure for commencement of testacy proceedings, 91A-3-403

official record as evidence of death, 91A-1-107

presumption from continuous absence, 91A-1-107 (3)

Decedents' estates, application of code to, 91A-1-301—See DECEDENTS' ESTATES

Distribution of decedent estate, 91A-3-901 to 91A-3-916—See DECEDENTS' ESTATES, Distribution of estate

Effective date, 91A-6-102

application of code on effective date, 91A-6-102 (2)

Fraud, remedies of persons injured by, limitation periods, 91A-1-106

General definitions, 91A-1-201

Implied repeal, construction against, 91A-1-105

Incapacitated persons, application of code to, 91A-1-301—See INCAPACITATED PERSONS

Intestacy adjudication and appointment of personal representative, petition for, procedure, 91A-3-402

Intestate succession, 91A-2-101 to 91A-2-112—See DECEDENTS' ESTATES, Intestate succession

divorce, annulment or decree of separation, effect on succession, 91A-2-802

homicide on decedent, effect, 91A-2-803

renunciation of succession, 91A-2-801

Law and equity principles supplemental, 91A-1-103

Liberal construction to promote purposes and policies of code, 91A-1-102

Minors, application of code to, 91A-1-301—See CHILDREN AND MINORS, Guardians of minors; see also PROTECTIVE PROCEEDINGS

Missing persons, application of code to affairs and estates of, 91A-1-301—See MISSING PERSONS

official record as evidence, 91A-1-107

Nonresidents, application of code to property under state jurisdiction, 91A-1-301—See DECEDENTS' ESTATES, Nonresident decedents

Nontestamentary instruments, provisions not invalidated by code, 91A-6-101

Personal representatives, appointment, control and termination of authority, 91A-3-601 to 91A-3-722—See PERSONAL REPRESENTATIVES

foreign personal representatives, ancillary administration by, 91A-4-101 to 91A-4-401

special administrators, 91A-3-614 to 91A-3-618

Persons and estates subject to code generally, 91A-1-301

Persons under disability, 91A-5-101 to 91A-5-431

conservator appointed in protective proceedings, 91A-5-401 to 91A-5-431—See PROTECTIVE PROCEEDINGS

incapacitated persons, 91A-5-301 to 91A-5-313—See INCAPACITATED PERSONS

minors, appointment of guardian for, 91A-5-201 to 91A-5-212—See CHILDREN AND MINORS, Guardians of minors

powers of attorney, effect of disability on, 91A-5-501, 91A-5-502

Power of appointment—See POWER OF APPOINTMENT

Precedence of code provisions over conflicting statutes, 91A-6-104

Probate and administration proceedings, general provisions, 91A-3-101 to 91A-3-109—See PROBATE AND ADMINISTRATION PROCEEDINGS

formal proceedings, 91A-3-401 to 91A-3-414

informal proceedings, 91A-3-301 to 91A-3-311

supervised administration, 91A-3-501 to 91A-3-505

Purposes and policies of code, 91A-1-102

INDEX

References are to Title and Section numbers

UNIFORM PROBATE CODE (Continued)

- Repeal of provisions not implied from subsequent legislation, 91A-1-105
- Seven year absence unheard of as creating presumption of death, 91A-1-107
- Severability of provisions, 91A-1-104
- Short title, 91A-1-101
- Simultaneous deaths, rules of evidence applicable to, 91A-1-107
- Small estates, 91A-3-1201 to 91A-3-1205—See DECEDENTS' ESTATES, Small estates
- Status of person, official record as evidence of, 91A-1-107 (2)
- Summary administration of decedents' estates, 91A-3-1203, 91A-3-1204—See DECEDENTS' ESTATES, Small estates
- Surviving spouse and children, allowances to, 91A-2-201 to 91A-2-207—See DECEDENTS' ESTATES
- Terms "executor" or "administrator" include term "personal representative," 91A-6-103—See PERSONAL REPRESENTATIVES
- Territorial application of code, 91A-1-301
- Wills, 91A-2-501 to 91A-2-513—See WILLS
 - custody and deposit of wills, 91A-2-901, 91A-2-902
 - probate of wills and administration, 91A-3-101 to 91A-3-1205—See PROBATE AND ADMINISTRATION PROCEEDINGS

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

See SUPPORT, Reciprocal enforcement, 93-2601-41 to 93-2601-82

UNIFORM TRUSTEES' POWERS ACT

See TRUSTS AND TRUSTEES

UNITED STATES

- Compact with United States not affected by 1972 Constitution, 1972 Const., I
- Installations and facilities donated to state, acceptance by board of examiners, 81-1101.1
- Land grants, restrictions on disposition, 1972 Const., X, 11
- Migratory bird reservations, consent to acquisition, 83-113
- Property tax exemption, 1972 Const., VIII, 5
- Veterans administration center, state jurisdiction accepted, 83-114

UNIVERSITY OF MONTANA

See COLLEGES AND UNIVERSITIES

- Experiment station established in forestry school, 28-301—See FORESTS AND FORESTRY, Experiment station

UNIVERSITY SYSTEM

See COLLEGES AND UNIVERSITIES, Montana university system

URANIUM

- Solution extraction, control and regulation of, 50-1701 to 50-1704—See MINES AND MINING, Uranium solution extraction

URBAN RENEWAL LAW

See CITIES AND TOWNS, Urban renewal law

USURY

- Secured Transactions chapter, usury law not affected by, 87A-9-201

V

VEHICLE EQUIPMENT SAFETY COMMISSION

- Accounts of commission, inspection by state examiner, 32-21-174
- Budgets submitted to state budget director, 32-21-173
- Co-operation of governmental agencies with commission, 32-21-171
- Creation by terms of interstate compact, 32-21-166
- Documents of commission to be filed with highway patrol board, 32-21-172

INDEX

References are to Title and Section numbers

VEHICLE EQUIPMENT SAFETY COMMISSION (Continued)

- Legislative approval required for rules and regulations of commission, 32-21-168
- Notices to be filed with highway patrol supervisor, 32-21-172
- Representation of Montana on commission, 32-21-169
- Retirement of commission employees, 32-21-170

VENDING MACHINES

- Store license tax, vending machines excepted, 84-2410

VENEREAL DISEASE

- Blood tests, standards and laboratories approved by department, 69-4611
- Certificates of freedom from disease, restrictions on issuance and use, 69-4609
- Consent by minors to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS
- Definition of disease, 69-4601
- Departmental functions with respect to disease, 69-4602
- Disclosure of information on persons infected, restrictions, 69-4610
- Drugs for treatment of disease, restrictions on sale or recommendation, 69-4608
- Educational campaigns for control of disease, 69-4602
- Examination of suspects required by health officer, 69-4605
- Exposure of other persons prohibited, 69-4601
 - misdemeanor, 69-4617
 - report of exposure to state department, 69-4607
- Federal funds, acceptance and use for control of disease, 69-4603
- Isolation of persons who refuse examination or treatment, 69-4605
- Penalty for violation of chapter or rules, 69-4617
- Prisoners, examination and treatment for disease, 69-4606
- Privileged information concerning infected persons, 69-4610
- Reports of cases by physicians, 69-4604
 - exposure of other persons to be reported, 69-4607
- Rules of department having effect of law, 69-4616
- State department's functions with respect to disease, 69-4602
- Treatment required by health officer, 69-4605

VENUE

- Change of venue in civil cases, procedure, M. R. Civ. P., Rule 12(b)
 - payment of costs and fees by party filing complaint, 93-2908
- Change of venue in criminal cases, 1972 Const., II, 24; 95-401, 95-1710
 - justices' and police courts, 95-2003
- Rules of civil procedure do not affect venue, M. R. Civ. P., Rule 82
- Uniform Probate Code
 - probate and administration proceedings, 91A-3-201
 - venue of proceedings generally, 91A-1-303

VERDICTS

- Coroner's inquest, verdict in writing, contents, 95-807
- Criminal cases, 95-1909, 95-2006—See CRIMINAL PROCEDURE, Verdicts
- Directed verdict, motion for, M. R. Civ. P., Rule 50
- Interrogatories to jury, M. R. Civ. P., Rule 49(b)
- Judgment, entry on verdict, M. R. Civ. P., Rule 58
- Judgment notwithstanding the verdict, motion for, M. R. Civ. P., Rules 50(b) to (d)
 - conditional rulings on grant of motion, M. R. Civ. P., Rule 50(c)
 - denial of motion, M. R. Civ. P., Rule 50(d)
- Number of jurors required to concur in civil cases, 1972 Const., II, 26; M. R. Civ. P., Rule 48
 - six-member jury, 93-1205
- Special verdicts, M. R. Civ. P., Rule 49(a)

VETERANS

- Board of veteran's affairs, duties, 71-2202
 - acknowledgments, members and employees of board may take, 71-2203
 - aid to be rendered by state, county and municipal officers, 71-2204
 - definition, 77-2201

INDEX

References are to Title and Section numbers

VETERANS (Continued)

Board of veteran's affairs (Continued)

- federal funds, board may accept, 71-2206
- money may not be accepted for services, 71-2205
- penalty for violation, 71-2205
- officers of board, 71-2203
- reimbursement of board, contracts with federal agency authorized, 71-2207

Bonds for payment or redemption of compensation bonds, 79-2202, 79-2205

Burial of veteran, duties of county clerk, 71-123

Disabled veterans, honorarium, 77-2502 (4)

Fort Harrison Veterans Administration Center, state jurisdiction accepted, 83-114

Home for veterans

- constitutional provision for establishment of institutions and facilities, 1972 Const., XII, 3
- cost of support, payment by resident or responsible person, 80-1601 to 80-1604—
See STATE INSTITUTIONS, Cost of support of residents
- eligibility for residence in home, 80-1803
 - spouses admitted as space allows, 80-1801
- federal money, acceptance and use for benefit of home, 80-1804
- industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
- location, 80-1801
- management and control of home, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
- purpose of home, 80-1801
- superintendent to be honorably discharged veteran, 80-1802

License plates issued free to disabled veterans, 53-106.8

- one automobile, limitation to, 53-106.10
- transfer of plate prohibited, 53-106.9
- wrongful attempt to secure plates as misdemeanor, 53-106.11

Organizations housed in Veterans and Pioneers Memorial Building, 78-202

Preference in public employment, 77-501

Special treatment in the law, 1972 Const., II, 35

Taxation, classification of disabled veteran's dwelling house, 84-301

Veterans' Day Holiday, 19-107

Vietnam veterans, honorarium or adjusted compensation granted, 77-2501 to 77-2511

- amount paid by other state or territory deducted, 77-2502
- application for payment filed with state board of examiners, 77-2504
 - approval of application by board, issuance of warrant, 77-2504
 - false application as criminal offense, 77-2507
 - form and contents of application, 77-2507
 - guardian or custodian as applicant, 77-2505
 - time for filing application, deadline, 77-2506
- death of serviceman occurring before payment, distribution of grant, 77-2503
- definition of terms, 77-2501
- dishonorably discharged person ineligible, 77-2502
- employment of personnel by board authorized, 77-2511
- expenses of board, payment, 77-2511
- grant not assignable, may not be encumbered, and exempt from judicial process, 77-2510
- liberal administration of law intended, 77-2508
- office supplies and equipment of board to be provided, 77-2511
- purpose of grant, 77-2502
- rules and regulations of board of examiners, 77-2508
- servicemen eligible for grant, 77-2502
- state and county officials to render assistance to board of examiners, 77-2509
- surviving spouse, children or parents, eligibility, amount, 77-2502

Welfare commission renamed and transferred to department of social and rehabilitation services, 82A-1905

VETERANS AND PIONEERS MEMORIAL BUILDING

See STATE CAPITOL, 78-202

INDEX

References are to Title and Section numbers

VETERANS' MEMORIAL MONEYS

Appropriations, requests for, 78-302
Commission abolished, 82-3322
Purpose of expenditures, 78-302

VETERINARY MEDICINE

Board of veterinarians

- administrative services provided by department, 82A-1603
- allocation to department for administrative purposes, 82A-1602
- appointment, qualifications, removal and terms of members, 82A-1602.24
- attorneys employed to represent board before supreme court, 66-2202(4)
- continuation in office of board members, 82A-1606
- employment of personnel for board, 82A-1604
- existence and composition of board, 82A-1602.24
- legal assistance in hearings by board, 82A-1604
- licensees and registrants, lists kept by department, 66-2203
- money received, deposit and use by board, 66-2203
- officers, annual election, 66-2202
- organization of board, rules for performance of duties, 66-2203
- powers and duties, 66-2202
- quorum at meetings, 66-2202
- receipts and disbursements, record kept by department, 66-2203
- record of board proceedings kept by department, open to public inspection, 66-2203
- retention of functions by board, 82A-1605
- travel expense of members, 66-2203 (1)

Continuing education, requirements for renewal of registration, 66-2207

Corporations for practice of veterinary medicine, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS

Criminal offenders, licensing of, 66-4001 to 66-4005—See LICENSURE OF CRIMINAL OFFENDERS

Examination of applicants for license to practice, 66-2204

Injunction against violations, 66-2215

Malpractice, statute of limitations, 93-2624

Pregnancy and fertility testing within scope of practice, 66-2209

- exemptions from veterinary practice law unimpaired, 66-2209.2

- testing of own animals not prohibited, 66-2209.1

Qualifications of applicants for license to practice, 66-2204

Registration of licensees required annually, fee, continuing education requirement, 66-2207 (3)

Residence and office addresses of licensees to be on file with department, 66-2207(5)

Temporary permit to practice, 66-2204

Veterinary technicians, licensing authorized, 66-2213

- annual registration required, 66-2213 (8)

- definition, 66-2213 (2)

- denial, suspension and revocation of licenses or certificates, grounds, 66-2214

- examination of applicants, fee, 66-2213 (3)

- information required of applicant, 66-2213 (3)

- licensing of experienced technicians without examination, 66-2213 (5)

- rules adopted by board governing examinations, 66-2213 (4)

- issuance of license, 66-2213 (6)

- scope of practice authorized, 66-2213 (7)

VETO

Governor's power, 1972 Const., VI, 10

VIETNAM VETERANS

Honorarium or adjusted compensation granted, 77-2501 to 77-2511—See VETERANS, Vietnam veterans

VITAL STATISTICS

Adoption report filed by clerk of court, 69-4433

- substitute birth certificate, issuance, 69-4420

- recording of substitute certificate, 69-4421

- restoration of original certificate on annulment of adoption, 69-4421

INDEX

References are to Title and Section numbers

VITAL STATISTICS (Continued)

- Annulment of marriage, certificate prepared and forwarded by clerk of court, 69-4433
 - information required in certificates, 69-4411
 - report prepared by clerk, contents, 69-4434
- Birth certificates, filing required, 69-4413
 - adoption of child, issuance of substitute certificate, 69-4420
 - recording of substitute certificate, 69-4421
 - restoration of original on annulment of adoption, 69-4421
 - amendment of certificate permitted, 69-4416
 - notation on altered certificate, 69-4417
 - probative value of altered certificate, 69-4419
 - delayed certificate, filing permitted, 69-4416
 - notation on delayed certificate, 69-4417
 - probative value of delayed certificate, 69-4419
 - evidentiary value of certificates, 69-4412
 - forwarding and filing of original certificates, 69-4411
 - foundlings, report constituting certificate, 69-4415
 - illegitimacy disclosed only on court order, 69-4422
 - information required in certificates, 69-4411
 - judicial procedure for establishment of date and place of birth, 69-4418
 - legitimation of child, issuance of new certificate, 69-4423
 - unattended births, supplementary report by registrar, 69-4414
- Burial permit required for disposition of dead body, 69-4428
 - delay in determining cause of death, issuance of permit, 69-4427
 - disinterment, permit required, 69-4428.1
 - importation of body into state, indorsement of permit, 69-4429
- Certified copy of certificates furnished on request, 69-4406
 - fee for certified copy, 69-4407
 - disposition of fees, 69-4408
 - local registrars not to issue certified copies, 69-4411
- Death certificate, preparation and filing, 69-4425
 - amendment of certificate permitted, 69-4416
 - burial permit, certificate or notice of delay required for, 69-4428
 - delay in determining cause of death, notice of reason required, 69-4427
 - evidentiary value of certificates, 69-4412
 - filing and forwarding of original certificates, 69-4411
 - information included in certificates, 69-4411
 - information to be furnished department on demand, 69-4435
 - time of filing, 69-4424
 - unattended death, information used to complete certificate, 69-4426
- Definition of terms, 69-4401
- Departmental powers and duties, 69-4403
- Disclosure of information from records restricted, 69-4404
 - governmental agencies, disclosure to, 69-4405
 - illegitimacy, court order required for disclosure, 69-4422
 - statistical use of information permitted, 69-4405
- Divorce certificate, preparation and forwarding by clerk of court, 69-4433
 - evidentiary value of certificates, 69-4412
 - information furnished to department on demand, 69-4435
 - information to be included in certificate, 69-4411
 - report by clerk, contents, 69-4434
- Institutions to report information pertaining to inmates or patients, 69-4430
- Local registrars, appointment and supervision, 69-4409
 - deputies, appointment, 69-4410
 - fees paid to local registrars, 69-4431
- Marriage certificates filed, report to state board, 69-4432
 - evidentiary value of certificates, 69-4412
 - information included in certificates, 69-4411
 - information to be furnished department on demand, 69-4435
- State-wide system established by department, 69-4402
- Violations of act or regulations
 - local registrars to report violations, 69-4410
 - major violations, penalty, 69-4436
 - minor violations, penalty, 69-4437

INDEX

References are to Title and Section numbers

VOCATIONAL SCHOOL FOR GIRLS

See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

VOLUNTEER FIRE DEPARTMENTS

Audit of accounts, 82-4515 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit

W

WAGES

Assignment of claims against state, 83-901 to 83-904

Assignment of wages to wage broker, consent of spouse required, formal requirements, 41-1506

Assignments excluded from Uniform Commercial Code, 87A-9-104

Contractors bond for payment of wages and benefits, 41-2701 to 41-2705

approval of bond by commissioner required, 41-2702 (1) (a)

certain resident contractors exempt, 41-2704

"contractor" defined, 41-2701 (2)

employee's right to sue on bond, 41-2703

one bond only required, 41-2702 (3)

person contracting with contractor failing to require bond, liability for wages and benefits, 41-2702 (2)

rules, promulgation by commissioner, 41-2705

terms of bond, filing, 41-2702 (1)

Minimum wages, 41-2303

cumulative provisions, 41-2307

definition of terms, 41-2302

enforcement by wage claim action, 41-2306

excluded employment, 41-2304

farm workers, minimum wages for, 41-2303

interstate employment excluded, 41-2307

overtime payments, 41-2303

policy of state, 41-2301

regulations for enforcement, 41-2305

Payment of

failure to pay when due

assignment and prosecution of claim by commission, 41-1314.2

commissioner's attempt to pay collected wages to person entitled, 41-1314.3

deposit of wages collected by commissioner in agency fund, 41-1314.3

investigations and inspections by commissioners, 41-1314.1

judicial enforcement of commissioner's determination, 41-1314.4

separation from employment before payday, when payable, 41-1303

unclaimed wages forfeited to state general fund, period held by commissioner, 41-1314.3

maximum period for withholding by employer, 41-1301 (2)

Restaurant, Bar and Tavern Wage Protection Act

affidavit of ownership of equipment required of lessees, 41-2005

time of filing affidavit, 41-2006

bond required of lessee engaging in business, 41-2002

• amount of bond required, 41-2005

cancellation of bond revokes certificate, 41-2006

condition of bond, 41-2006

discharge of sureties from further liability, 41-2010

increase in bond required by commissioner, 41-2010

new bond required by commissioner, 41-2010

state as obligee of bond, 41-2006

time of filing bond, 41-2006

certification of lessee on filing of bond, 41-2009

revocation of certificate by cancellation of bond, 41-2006

definition of terms, 41-2004

injunction against engaging in business until bond filed, 41-2008

purpose of act, 41-2003

short title, 41-2001

INDEX

References are to Title and Section numbers

WAIVER

Affirmative defense, M. R. Civ. P., Rule 8(c)

WAR

Civilian control of military, 1972 Const., II, 32

Continuity in government, post-enemy-attack

citation of act, 82-3801

city or town executives, succession to offices, 82-3805

city or town governing bodies, succession to membership, 82-3804

constitutional provisions, 1889 Const., V, 46; 1972 Const., III, 2

county commissioners, succession to board membership, 82-3803

duration of operation of act, 82-3809

governorship, succession to, 82-3802

quorum for state or local governing bodies, 82-3806

seat of local government, moving, 82-3808

seat of state government, moving, 82-3807

Importation of armed forces for preservation of peace or suppression of domestic violence, 1972 Const., II, 33

Quartering of soldiers in houses prohibited, 1972 Const., II, 32

Resource management, post-enemy-attack

definition of terms, 77-2402

direction and control by governor, 77-2403

governor's powers and duties, 77-2403

legislative findings, 77-2401

policy of state, 77-2401

proclamation of emergency by governor, 77-2404

judicial inquiry as to proclamation and facts, 77-2405

violation of rules and regulations, penalties, 77-2406

WAREHOUSE RECEIPTS

Actions based on bailment, terms in receipt prescribing time and manner of instituting, 87A-7-204

Altered receipt, enforceability, 87A-7-208

Attachment of goods covered by documents, procedure required, 87A-7-602

Authenticity of third-party documents presumed, 87A-1-202

Bills of lading law, provisions included in but omitted from warehouse receipts law, 87A-7-105

Bond against withdrawal required by law, effect of receipt issued by owner of goods, 87A-7-201

Care required of warehousemen to prevent loss or injury to goods, 87A-7-204

Citation of Uniform Commercial Code chapter, 87A-7-101

Claims based on bailment, terms in receipt prescribing time and manner of presenting, 87A-7-204

Commercial Paper chapter inapplicable to receipts, 87A-3-103

Conflicting claims to goods, warehouseman compelling interpleader, 87A-7-603

Contents required or permitted in receipts, 87A-7-202

Course of dealing between parties, application, 87A-1-205

Damages for loss or injury to goods, limitation by contract, 87A-7-204

Defenses defeated by negotiation of receipt, 87A-7-502

Definition of terms, 87A-7-102

general definitions in Uniform Commercial Code, 87A-1-201

Delivery of goods by warehouseman

destroyed receipt, 87A-7-601

failure to require receipt, criminal penalty, 88-154

good faith delivery exonerating warehouseman, 87A-7-404

lien lost by voluntary delivery, 87A-7-209

lien to be satisfied before delivery, 87A-7-403

lost receipt, 87A-7-601

obligation of warehouseman to deliver, 87A-7-403

persons who may require delivery, 87A-7-403

stolen receipt, 87A-7-601

surrender of document required before delivery, 87A-7-403

termination of storage by warehouseman, 87A-7-206

INDEX

References are to Title and Section numbers

WAREHOUSE RECEIPTS (Continued)

- Destroyed receipts, obtaining delivery of goods, 87A-7-601
- Deterioration of goods, notice by warehouseman to remove, 87A-7-206
- Duplicate receipt, rights and liabilities of parties under, 87A-7-402
 - criminal penalty for issuance, 88-152
- Endorsement of receipt
 - default by warehouseman or previous endorser, endorser not liable for, 87A-7-505
 - negotiation, when endorsement required for, 87A-7-501
 - nonnegotiable receipt, effect of endorsement, 87A-7-501
 - transferee's right to require necessary endorsement, 87A-7-506
- Federal law controlling over Commercial Code chapter, 87A-7-103
- Formal requirements of receipt, 87A-7-202
- Fungible goods covered by receipt
 - buyer from warehouseman takes free of claim under receipt, 87A-7-205
 - commingling permitted, 87A-7-207
 - overissue of receipts, persons entitled to goods, 87A-7-207
 - liability of issuer for damages, 87A-7-402
- Good faith required, 87A-1-203
- Hazardous goods, sale or disposition by warehouseman, 87A-7-206
- Interpleader of conflicting claims to goods, 87A-7-603
- Irregularities in issue of receipt, obligations of issuer unaffected, 87A-7-401
- Judicial process against goods covered by receipt, procedure required, 87A-7-602
- Letter of credit requirements, law governing adequacy, 87A-7-509
- License required for issuance of receipts, effect of receipt issued by owners of goods, 87A-7-201
- Lien of warehouseman
 - charges covered by lien, 87A-7-209
 - delivery of goods causing loss of lien, 87A-7-209
 - delivery of goods, satisfaction of lien required for, 87A-7-403
 - enforcement of lien, procedure, 87A-7-210
 - persons against whom lien enforceable, 87A-7-209
 - refusal to deliver goods causing loss of lien, 87A-7-209
 - sale of goods to enforce lien, 87A-7-210
 - termination of storage at warehouseman's option, sale of goods on, 87A-7-206
- Lost receipts, obtaining delivery on, 87A-7-601
- Misdescription of goods in receipt, liability of issuer, 87A-7-203
- Negotiability of receipt, requirements for, 87A-7-104
- Negotiation of receipt
 - defenses defeated by negotiations, 87A-7-502
 - delivery required for negotiation, 87A-7-501
 - endorsement necessary to title, right of holder to require, 87A-7-506
 - endorsement, when required for negotiation, 87A-7-501
 - formal requirements for negotiation, 87A-7-501
 - rights acquired by holder to whom negotiation made, 87A-7-502
 - title required by holder to whom negotiation made, 87A-7-502
 - warranties of negotiator, 87A-7-507
 - intermediary delivering documents, 87A-7-508
- Nonreceipt of goods described, liability of warehousemen, 87A-7-203
- Omission of required terms from receipt, liability of warehousemen, 87A-7-202
- Perishable goods, removal on notification by warehouseman, 87A-7-206
- Persons who may issue receipts, 87A-7-201
- Prior interest prevailing over interest represented by receipt, 87A-7-503
- Regulatory laws controlling over Commercial Code chapter, 87A-7-103, 87A-10-103
- Removal of goods from storage on warehouseman's notice, 87A-7-206
- Reservation of rights by party while performing or accepting performance, 87A-1-207
- Sale contract requirements, law governing adequacy, 87A-7-509
- Sale of goods to enforce warehouseman's lien, 87A-7-210
- Security interest in receipt, manner of perfection, 87A-9-304
 - possession taken by secured party, 87A-9-305
- Security interest reserved by warehouseman, enforceability, 87A-7-209
- Separation of goods required, 87A-7-207
- Short title of Uniform Commercial Code chapter, 87A-7-101
- Stolen receipts, obtaining delivery on, 87A-7-601

INDEX

References are to Title and Section numbers

WAREHOUSE RECEIPTS (Continued)

Termination of storage at warehouseman's option, 87A-7-206

Time allowed for required actions, 87A-1-204

Transfer of receipt

endorsement necessary to title, right of transferee to require, 87A-7-506

notification to warehouseman of transfer, adverse interest perfected before, 87A-7-504

rights acquired by transferee, 87A-7-504

title acquired by transferee, 87A-7-504

warranties of transferor, 87A-7-507

intermediary delivering receipt, 87A-7-508

Unaccepted delivery order, negotiation of receipt defeating title based on, 87A-7-503

Unauthorized issuance, obligations of issuer unaffected, 87A-7-401

Unknown goods, description in receipt, 87A-7-203

Usage of trade, application, 87A-1-205

Warranties by transferor of receipt, 87A-7-507

intermediary delivering receipt, 87A-7-508

Wrongfully procured receipts, when defeated by prior interest, 87A-7-503

WARM SPRINGS STATE HOSPITAL

See also STATE INSTITUTIONS

Administration by department of institutions, 82A-801.1

Cost of support, payment by resident or responsible person, 80-1601 to 80-1604

Indigent persons, reference to board of public welfare after discharge, 38-110

Industrial activities permitted, 80-1501 to 80-1503

Location of hospital, 80-2401

Management and control of hospital, 80-1401 to 80-1409

Nonresident insane persons, receipt pending return to state of residence, 38-120

Purpose of hospital, 80-2401

Superintendent, qualifications, 80-2402

Transfer of patients from other institutions

center for the aged, 80-2502

children's center, 80-2106

Galen state hospital, 80-1703

juvenile facilities of department of institutions, 80-2209

prison inmate, commitment proceedings, 80-1908

WARRANTS

City and town warrants, investment of municipal funds in, 11-1310

WARRANTY

See SALES, warranties

Blood transfusion as service and not sale, 69-2203

immunity of blood bank making proper tests, 69-2204

WATER AND SEWER DISTRICTS

See COUNTY WATER AND SEWER DISTRICTS

WATER COMPANIES

Financing statements of utility, contents and place of filing, 87A-9-302.2

definition of terms, 87A-9-302.1

Uniform Commercial Code, application, 87A-9-302.3

WATER CONSERVANCY DISTRICTS

Annexation of realty, 89-3439

preannexation bonds not lien without prior agreement, 89-3440

Assessments, 89-3416, 89-3419

Benefits, 89-3401

Bonds, issuance of, 89-3426

amount to be issued, 89-3427

election, 89-3428, 89-3429

interim receipts, 89-3432

INDEX

References are to Title and Section numbers

WATER CONSERVANCY DISTRICTS (Continued)

- Bonds, issuance of (Continued)
 - maximum term, 89-3426
 - more than one purpose, single issue authorized, 89-3426
 - redemption, 89-3435
 - refunding authorized, 89-3435
 - registration of bonds, 89-3433
 - resolution, 89-3428, 89-3430
 - retirement fund, 89-3436
 - sale, 89-3430
 - proceeds, 89-3434
 - tax exempt status, 89-3431
- Condemnation authorized, 89-3420
- Definitions, 89-3403
- Directors, powers of, 89-3414
 - annual report, 89-3421
 - budgetary duties, 89-3417, 89-3418
- Dissolution of district, 89-3442 to 89-3447
- Elections after organization, procedures, 89-3424
 - challenges, 89-3425
 - qualification of electors, 89-3423
- Electric energy, 89-3448
- Examination of accounts, 82-4516 to 82-4530—See DEPARTMENT OF COMMUNITY AFFAIRS, Annual audit of governmental entities
- Examination of financial records by department, report, fee, 89-3422
- Exclusion of territory from district, 89-3441
- Merger of districts, 89-3438
- Organization of districts
 - corporate surety bond, 89-3412
 - directors, 89-3412
 - election on, 89-3409
 - filing of documents, 89-3410
 - meetings, 89-3413
 - officers, 89-3413
 - procedure, 89-3408
 - reimbursement for election expenses, 89-3411
 - request for preliminary survey, duties of department upon receipt of, 89-3405 to 89-3407
- Organization petition, court hearing on, 89-3409
- Other agencies unaffected, 89-3449
- Participation in federal programs, 89-3415
- Preliminary survey, petition for, 89-3404
- Procedure for organization, 89-3408
- Purpose of act, 89-3402
- Request for preliminary survey, duties of department upon receipt of, 89-3405 to 89-3407
 - cost as construction cost, 89-3411
- Revolving funds, 89-3437
- Surplus funds, investment of, 89-3419

WATER CONSERVATION

See FLOOD CONTROL AND WATER CONSERVATION; SOIL AND WATER CONSERVATION; WATER CONSERVANCY DISTRICTS; WATER RESOURCES BOARD; WATERS AND WATER RIGHTS; WATER SUPPLY

WATER POLLUTION

- Advisory council, existence and composition, appointment, qualifications and tenure of members, 82A-607
 - advisory capacity to department, 69-4812
 - chairman, selection, 69-4812
 - compensation and expenses of members, 82A-110(5)

INDEX

References are to Title and Section numbers

WATER POLLUTION (Continued)

Advisory council (Continued)

- meetings of council, 69-4812(2), 82A-110(7)
- members designating deputies, 69-4812(3)
- officers, election, 82A-110(6)
- quorum for transaction of business, 82A-110(8)
- secretary appointed by director, duties, 69-4812(1)

Board of health and environmental sciences continued as renamed, 82A-605(1)

- designation as quasi-judicial board, 82A-605(2)
- duties of board, 69-4808.2
- hearing on suspension, modification, revocation or denial of permit, 69-4807.1

Classification of waters in relation to beneficial uses to be established, review and modification authorized, 69-4808.2

- hearing by board, notice, procedure, 69-4814

Confidentiality of records and information, 69-4822

Co-operation with other states, federal and state agencies, 69-4808.2

Definition of terms, 69-4802

Department of health and environmental sciences to administer chapter, exceptions, methods, 69-4805, 82A-601.1

- administration of water pollution law, 69-4805, 82A-604
- assignment of functions to division of environmental sciences, 82A-604
- duties, 69-4809.1

Drainage or seepage water from all sources subject to law, 69-4804

Existing dams considered natural condition, 69-4801

Industrial, public or private projects constituting source of pollution, waste treatment facilities to be required, 69-4808.2

Loans and grants from federal government and other sources, acceptance authorized, 69-4808.2

Local governments ineligible for state matching funds, administration of appropriated funds for purposes of federal law, 69-4808.3

Monitoring and inspection of sewage and waste discharges, duties which may be required of owner, 69-4809.2

Permit required for disposal system or discharge of waste, 69-4806

- issuance of permit, 69-4809.1
- rules of board governing permits, 69-4808.2
- suspension, revocation, modification or denial, notice, hearing, order, effective date, 69-4807.1, 69-4809.1

Policy of state, 69-4801

Protests by other persons or agencies, duties of department, 69-4826

Purity standards to be formulated, review and modification authorized, 69-4808.2

State and local agencies to co-operate in enforcement, 69-4827

State board of health renamed and continued, 82A-605

- duties of board, 69-4808.2, 82A-604
- hearing on suspension, modification, revocation or denial of permits, 69-4807.1

Subdivisions, sanitary restrictions as to water supply and sewage disposal, 69-5001 to 69-5005—See SUBDIVISIONS

Treatment of wastes, duties of board, 69-4808.2

Treatment works of municipalities or other entities operating sewage systems, 69-4808.4, 69-4808.5

- determination of rates and charges, 69-4808.5
- enforcement of municipal or other entity responsibilities by department, 69-4808.4 (5), (6)
- rates and charges to meet costs of treatment works, use of funds, 69-4808.4 (1) to (3)
- records regarding rates and charges to be kept and open to departmental inspection, 69-4808.4 (4)

Unlawful to pollute state waters, 69-4806

Uranium solution extraction, regulation and control of, 50-1701 to 50-1704—See MINES AND MINING, Uranium solution extraction

Violations, 69-4820 to 69-4823

- corporate officers, responsibility, 69-4820.1

INDEX

References are to Title and Section numbers

WATER POLLUTION (Continued)

Violations (Continued)

- emergency orders to stop, prevent or moderate pollution, notice, hearing, 69-4824
- judicial relief, 69-4824.1
- enforcement remedies of department, 69-4820.1
- existing remedies unaffected, 69-4823
- injunctive relief authorized, 69-4820.1, 69-4825
- judicial review of board action, appeal to supreme court, 69-4821
- notice, hearing by board, procedure, order, penalty, 69-4820
- order for abatement of pollution, 69-4820
 - continued in force pending appeal, 69-4821
- penalties for violations, 69-4823
- protests by persons and entities, duties of department, 69-4826

WATER RESOURCES CONSERVATION

See STATE WATER CONSERVATION BOARD, permanent volume

Acquisition of water rights by department authorized, powers of department, 89-125—

See WATERS AND WATER RIGHTS

Board of natural resources and conservation, existence and composition, 82A-1509

- advisory capacity to department, 82A-1509(5)
- allocation to department for administrative purposes, 82A-1509(4)
- designation as quasi-judicial board, 82A-1509(3)
- rules, adoption authorized, 89-102.1

Construction of works by department authorized, 89-105—See Department of natural resources and conservation, below

- contracts for financing with United States, 89-117
- plans and operation of project adjusted to conform to federal regulations, 89-124

Contracts for sale or use of water, resources and facilities by department authorized, 89-115

- disposition of proceeds from sale or use of water, 89-116.1
- prices, rates and charges fixed by department, 89-115(1)
- sale to water users' associations authorized, 89-115(5)
 - liability of association for injury or damages for failure to maintain safe working and operating conditions, 89-115(2)
- termination of contracts upon failure of consumer to meet obligations, procedures, 89-115(3)(4)

waterworks, disposition by department authorized, conditions, 89-127

Contributions and appropriations, power of department to accept, 89-120

"Cost of works" defined, 89-102(4)

County and municipal participation in conservation and flood control projects, 89-3301 to 89-3314—See FLOOD CONTROL AND WATER CONSERVATION

Damaged or destroyed property, restoration or repair, 89-120

Dams and dikes, safety inspection of, 89-702, 89-702.1

Definition of terms, 89-102

Department of natural resources and conservation, existence, functions, 82A-1501 to 82A-1509—See DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

- approval of board required for exercise of departmental powers, 89-103.2
- construction of works by department authorized, 89-105
 - acquisition of necessary property, methods, procedures, 89-104
 - approval of board required, 89-103.2, 89-105
 - condemnation of property, procedures, limitations, 89-104
 - exercise of powers beyond territorial jurisdiction of state authorized, 89-105(4)
 - irrigation works across streams and public and private ways, duties of department, 89-106
 - "works" defined, 89-102(3)
- judicial and special proceedings by department authorized, 89-118(2)
- powers and duties, 89-118

Earmarked funds available for use by department, sources, 89-401, 89-402

Floodway management, authority of department, 89-3502

INDEX

References are to Title and Section numbers

WATER RESOURCES CONSERVATION (Continued)

- Funds created by board, 89-113 to 89-115—See STATE WATER CONSERVATION BOARD, Funds, permanent volume
 - administration of funds by department, 89-113 to 89-115
- Interstate waters, negotiation with other states and United States authorized, 89-142
- Inventory of water resources, powers and duties of department, 89-132.1
- Irrigation districts, creation, duties of department, 89-1201
- Irrigation works across stream or public or private way, duties of department, 89-106
- Legislative declaration of necessity and state policy, 89-101.2
- Liability for operations restricted to moneys available, 89-120
- Railroad or highway rights of way and embankments, contracts for temporary use, authorized, 89-3310
- Revenue bonds—See STATE WATER CONSERVATION BOARD, revenue bonds, permanent volume
- Rules adopted by department, 89-132.1
- Sale of water, use of water, resources and facilities by department authorized, 89-115—
 - See Contracts for sale or use of water, above
- Short title, 89-101.1
- State agencies and counties, contracting with department authorized, 89-140
- State water plan, policy, powers and duties of department, 89-101.2, 89-132.1
- Weather modification, duties of department and board, 89-310 to 89-331—See WEATHER MODIFICATION
- “Works” defined, 89-102
- Yellowstone River Compact obligations unimpaired, 89-103.7—See YELLOWSTONE RIVER COMPACT

WATERS AND WATER RIGHTS

- Abandonment of appropriative right, acts and omissions constituting, 89-894
 - existing rights, determination required, 89-894
 - petition filed in district court by department, hearing, determination, 89-895
- Administration, control, and regulation of rights, legislative provision for, 1972 Const., IX, 3
- Appropriation of water right, permit required, 89-880
 - adverse use or possession, prescription or estoppel ineffective to establish right to appropriate, 89-880
 - application for permit, form, 89-880
 - environmental impact statement required, fee payable, 89-8-102.2
 - fees, when required, determination by department, 89-8-102.2
 - grant or denial of application, conditions, modification, 89-884
 - hearing on objections, notice, consolidation, 89-883
 - notice of application, contents, publication and service, 89-881
 - objections to application, contents, 89-882
 - return of application to applicant, grounds, 89-880 (3)
 - controversies between appropriators, determination in district court, 89-896
 - copy of permit to be kept in office of department, 89-886
 - criteria for issuance of permit, 89-885
 - date of appropriation, 89-880 (6)
 - emergency appropriation under rules of board, 89-869, 89-880
 - federal or interstate controversy, intervention or assistance to appropriator by department, 89-899
 - filing of oil and gas well logs as compliance, conversion to waterwell, procedure, 89-880
 - ground water outside controlled area, limited appropriation without permit, procedure, 89-880
 - permit provisional when issued prior to final determination of existing rights, 89-880
 - priority date, 89-880 (5)
 - recording of permit, 89-886
 - reservoir, permit required for appropriation by, 89-889
 - revocation, notice, grounds, 89-887
 - state lands, appropriation for use on, 81-2018
 - statutory method exclusive, exception, 89-880
 - terms of permit, limitations, 89-886
 - transfer of right appurtenant to other lands, approval required, 89-893
 - vested rights not obtained under provisional permit, 89-880

INDEX

References are to Title and Section numbers

WATERS AND WATER RIGHTS (Continued)

- Attorney general to render legal assistance to department, 89-899
- Board of natural resources and conservation, powers and duties, 89-869
 - existing proceedings unaffected, 89-8-102.1
 - hearings before board, procedural laws applicable, 89-8-100
 - severability of provisions, 89-8-111
- Centralized records, 1972 Const., IX, 3; 89-870
- Certificate of water rights, issuance, recording, filing of copy, 89-879, 89-888
 - appropriative right completed, 89-888
 - existing water right, 89-879
- Changes in appropriation rights, departmental approval required, notice, hearing, 89-892
 - agricultural use to industrial use, change prohibited to large appropriators, 89-892 (3)
- Columbia interstate compact, 89-3201 to 89-3207—See COLUMBIA INTERSTATE COMPACT**
- Conservancy districts—See **WATER CONSERVANCY DISTRICTS**
- Constitutional provision on water rights, 1972 Const., IX, 3
- Conveyance of land as transfer of appurtenant water right, 89-893
- County attorneys to render legal assistance to department, 89-899
- Definition of terms, 89-867
- Department of natural resources and conservation, powers and duties, 89-868
 - acquisition of water rights by department, 89-125
- District courts to have supervision of water distribution among appropriators, 89-896
 - waste of water, proceedings to regulate and prevent, 89-897
- Diverting appropriated or reservoir water into natural channel of stream, conditions, limitations, 89-891.1
 - irrigation district water, appointment of commissioner for equitable distribution 89-1001 (6)
- Drainage districts—See DRAINAGE DISTRICTS**
- Entry on land by department to make inspection, notice, responsibility for actual damages, 89-898
- Existing rights recognized and confirmed, 1972 Const., IX, 3; 89-870 to 89-879
 - centralized record system of existing rights, 1972 Const., IX, 3; 89-870
 - certificate of existing water rights, issuance by department, basis, 89-879
 - data to be assembled, 89-870, 89-871
 - declaration of claimants, form, contents, transmittal to department, 89-872
 - final decree of district court, contents, effect, 89-877
 - appeal from final decree, 89-878
 - certificate of water rights, final decree as basis for issuance, 89-879
 - order requiring claimants of existing rights to file declaration, time allowed, notice, 89-872
 - petition for determination filed by department in district court, venue, 89-873
 - additional data required by district court, 89-874
 - contents of petition, 89-874
 - preliminary decree of district court, issuance, contents, distribution of copies, 89-875
 - data forming basis of decree open to inspection by parties, 89-875
 - hearing in district court on decree, procedure, 89-876
 - request for hearing on decree, filing, contents, service of copies, 89-876
 - public recreational rights represented by department of fish and game, 89-872
- Fees and penalties, deposit and disposition, 89-8-102
- First in time is first in right principle applicable, 89-896
- Fish and game affected by construction projects, 26-1501 to 26-1507—See **FISH AND GAME, Construction projects affecting fish and game**
- Flood control and water conservation projects, municipal participation, 89-3301 to 89-3314—See **FLOOD CONTROL AND WATER CONSERVATION**
- Floodway management and regulation, 89-3501 to 89-3515—See **FLOOD CONTROL AND WATER CONSERVATION**

INDEX

References are to Title and Section numbers

WATERS AND WATER RIGHTS (Continued)

Ground water regulation

- attorney general to assist in enforcement, 89-2930
 - contamination of ground water, measures to prevent, 89-2926
 - controlled ground water areas
 - authority of administrator to designate, 89-2914
 - hearing on proposal to establish, 89-2915
 - modification of previous order, 89-2915
 - notice of hearing on proposal for establishment, 89-2914
 - order limiting withdrawals of ground water in area, 89-2915
 - permit required to appropriate in controlled area, 89-2918
 - proposal by department, contents, notice, hearing, procedure, 89-2914
 - supervisors, appointment by department, 89-2932
 - county attorneys to assist in enforcement, 89-2930
 - definition of terms, 89-2911
 - entry of premises, rights of state agents, 89-2927
 - hearing to determine priorities
 - aggrieved persons, hearing before board, procedure, 89-2934.1
 - initiation by claimant or department, 89-2916
 - order, contents, filing, and effect, 89-2917
 - parties to be included in hearing, 89-2916
 - information available to public, 89-2928
 - information to be compiled by department, use of investigations, 89-2933
 - inspection rights of state agents, 89-2927
 - limited appropriation without permit outside controlled area, notice, procedure, 89-880
 - oath, administration to witness, 89-2934
 - oil and gas conservation commission, jurisdiction over oil wells producing water, 89-2916
 - penalties for violation of act, 89-2936
 - reports required are additional to other requirements, 89-2929
 - rules and regulations, promulgation and enforcement, 89-2931
 - standards for determining fresh water, establishment by department authorized, 89-2911(a)
 - subpoena powers of department, 89-2934
 - supervisors, appointment by department, duties, 89-2932
 - waste of ground water, measures to prevent, 89-2926
 - well logs, form, filing, correction, copy to bureau of mines and geology, 89-2928.1
- Inspections by department authorized, 89-898
- Instruments of transfer of interest in appropriative right, filing with department and county, 89-893
- Interstate compacts, negotiation by water conservation board, 81-2009
- Irrigation districts—See IRRIGATION DISTRICTS**
- Legal counsel, employment by department authorized, 89-899
- Oil and gas well logs, filing as compliance, conversion to water well, procedure, 89-880
- Policy and purpose declared by legislature, 89-866
- Priority between appropriators, rights excluded, effective dates, 89-891
- transfer of interest without loss of priority, 89-893
- Public use, declaration of, 1972 Const., IX, 3
- Reservation of water right by federal or state authority, application, notice, hearing, findings and determination of board, review, 89-890
- Reservoirs, permit required for appropriation by, 89-889
- Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
- Safe operating conditions, water users' association liability for, 89-115
- Sale of appropriative right for other purposes or to other lands, approval required, 89-893
- Severance of appropriative right from land, departmental approval required, 89-893
- State lands, appropriation for use on, 81-2018
- State ownership of water subject to use and appropriation by people, 1972 Const., IX, 3
- Taxability of water rights used for irrigation, 84-206
- Title of law, 89-865
- Transfer of appropriation right generally, 89-893

INDEX

References are to Title and Section numbers

WATERS AND WATER RIGHTS (Continued)

- Turning appropriated or reservoir water into natural channel of another stream authorized, conditions, limitations, 89-891.1
- Violations constituting misdemeanor, penalty, 89-8-101
- Water commissioners, appointment and authority in general, 89-1001
 - district court supervision, 89-896
- Weather modification activities, 89-310 to 89-331—See **WEATHER MODIFICATION**
- Yellowstone river waters
 - appropriation statement to be filed with department, 89-907
 - information made available to compact commission by department, 89-914
 - records of water diverted filed with department, 89-909
 - rules and regulations for enforcement of compact, 89-912
 - suspension of action on applications for permit pending determination of existing rights, 89-8-105
 - "application" defined, 89-8-104(3)
 - application for reservation by United States prohibited during suspension period, 89-8-107
 - applications for lesser quantities, when suspension authorized, 89-8-106
 - applications to which law applicable, 89-8-108
 - certain changes of use permitted, 89-8-110
 - definition of terms, 89-8-104
 - legislative findings and policy, 89-8-103
 - maximum term of suspension, 89-8-105
 - previously established reservation as preferred use, 89-8-105(2)
 - reservation applications by state agencies and political subdivisions to be made as rapidly as possible, 89-8-107
 - severability of provisions, 89-8-111
 - utility facility application exempt, 89-8-109
 - weir or other measuring device, duty to install, 89-908

WATER SUPPLY

- Boats, discharge of waste prohibited, 69-3508.1
 - decals, 69-3504.1
 - equipment required on boats, 69-3505
- Cities furnishing water to industries and persons outside city, 11-1001
- Criminal mischief causing interruption or impairment of supply, punishment, 94-6-102
- Domestic water supply, protection
 - appeal from board rules and standards, 69-4907
 - board of health and environmental sciences, functions, powers and duties, 69-4903
 - definition of terms, 69-4902
 - department of health and environmental sciences, powers and duties, 69-4904
 - penalty for violations, 69-4908
 - policy of state, 69-4901
 - prohibited acts endangering water supply, 69-4905
 - penalty for violation, 69-4908
 - state board of health to administer law, 69-4903
 - powers and duties of state board, 69-4904
 - well-drillers, information to board, 69-4906
- Excavations in street, protection of lines against damage, 32-4801 to 32-4808—See **STREETS**, Underground facility
- Pollution of water, 69-4801 to 69-4827—See **WATER POLLUTION**
- Subdivisions subject to sanitary restrictions, 69-5003
 - co-operation of state and local agencies required, 69-5009
 - definition of terms, 69-5002
 - enforcement procedures, 69-5007
 - existing remedies for violation unaffected, 69-5008
 - penalties for violation, 69-5008
 - plat not accepted unless in compliance, 69-5004
 - hearing on request of aggrieved party, 69-5006
 - policy of state, 69-5001
 - rules and standards for enforcement of requirements, 69-5005

INDEX

References are to Title and Section numbers

WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS

- Board of water and waste water operators, existence and composition, appointment, qualification and terms of members, 82A-612
 - advice and assistance to department, 69-5903
 - allocation to department for administrative purposes, 82A-612(4)
 - "department" defined, 69-5902(3)
 - chairman, annual election, 69-5903
 - compensation and expenses of members, 69-5903(3)
 - meetings of board, quorum, 69-5903(3)
- Certification of operators by director, 69-5905
 - application for certificate, 69-5908
 - examination waived for experienced operators, 69-5906
 - fees for certificate, 69-5909
 - disposition of fees, 69-5908
 - issuance and display of certificate, 69-5907
 - reinstatement of suspended or revoked certificate, 69-5909
 - renewal of certificates, 69-5909
 - requirement of certified operator for plant or system, 69-5906
 - retention of certificate after termination of employment, 69-5907
 - suspension or revocation of certificate, 69-5909
 - term of certificate, 69-5909
 - unlawful to operate plant or system without certified operator, 69-5911
- Classification of plants and systems, factors considered, 69-5904
- Definition of terms, 69-5902
- Policy of state, 69-5901
- Rules and regulations of board, 69-5910
- Violations of act or rules as misdemeanor, 69-5912

WATER WELLS

Contractors

- actions for compensation, proof of valid license required, 66-2612
- application for license, contents and filing, 66-2606
- apprenticeship completion required of applicant for license, 66-2608(1)
- board of water well contractors
 - administrative services provided by department, 82A-1603
 - appointment, qualifications and terms of members, 82A-1602.26
 - compensation and expenses of members, 66-2604 (2)
 - continuation in office of board members, exception, 82A-1606
 - employment of personnel, 66-2604, 82A-1602.26(6), 82A-1604(3)
 - existence and composition of board, 82A-1602.26
 - legal assistance in hearings by board, 82A-1604
 - oath of members, 66-2604
 - powers and duties, 66-2605
 - retention of functions by board, 82A-1605
 - rules and orders, adoption by board authorized, 66-2605
 - seal of board, 66-2604, 82A-1602.26(5)
- bond or other security required of licensees, 66-2609
- definition of terms, 66-2602.1
- exempt persons, 66-2602.2
- expiration of licenses, 66-2607
- fees for license, 66-2606
- inspection of wells by department upon request of board, 66-2605(3)
- issuance of license, 66-2606
- license required for construction of wells, 66-2603
- penalties for violations of license act, 66-2613
- public interest affected by business of drilling, 66-2603
- purpose of license act, 66-2602
- qualifications of applicants for license, 66-2608
- renewal of licenses, 66-2607
- revocation or suspension of license, 66-2610
 - failure to renew as ground for revocation or suspension, 66-2607
- rules and orders, adoption by board authorized, 66-2605
- successor in interest to licensee, completion of business by, 66-2615

INDEX

References are to Title and Section numbers

WATER WELLS (Continued)

Contractors (Continued)

- temporary license, requirements and issuance, 66-2606
- training programs, establishment by board, 66-2605

Records and data supplied to state board of health, 69-4906

WEAPONS

See CONCEALED WEAPONS; FIREARMS

WEATHER MODIFICATION

Account in agency fund, establishment, 89-325

Acquisition of property by department, 89-312

Contributions and appropriations, power of department to accept, 89-312

Definition of terms, 89-310

Expenses, payment from license and permit fees, 89-325

Fees deposited in earmarked revenue fund for use of department, 89-325

Liability of state and agents, not liable for acts of private persons, 89-330

License required, 89-313

- applications, review by department, 89-314

- exemptions from fee requirements, 89-314

- fee for license, 89-317

- issuance of license, 89-315

- qualifications of applicants, 89-315

- renewal of license, 89-316

- suspension or revocation, grounds for, procedure, 89-329

- term of license, 89-316

"Operation" defined, 89-319

Permits required, 89-313

- activities limited by terms of permit, 89-320

- fee, time of payment, 89-324

- issuance of permits, 89-318

- notice of intention to apply for permit, 89-320

 - contents of notice, 89-321

 - publication of notice, 89-322

- proof of financial responsibility by applicant, 89-323

- requirements for permit, 89-318

- separate permit for each operation, 89-319

- suspension or revocation, grounds for, procedure, 89-329

Powers of department, 89-312

Records of operations by licensees, contents, open to public, 89-326, 89-328

Reports of operations, requirements, open to public, 89-327, 89-328

Research and development projects, establishment of standards by rule, 89-312.1

Violation of act, misdemeanor, 89-331

"Weather modification and control" defined, 89-310

WEEDS

See COUNTIES, Weed control

WEIGHTS AND MEASURES

American and metric systems recognized, 90-154

Apples, 3-3401 to 3-3407—See AGRICULTURE, Apples

Commodities, sale of

- berries and small fruits, 90-184

- bread, 90-178

- bulk delivery, duplicate delivery ticket required, 90-182

- butter, oleomargarine and margarine, 90-179

- flour, cornmeal and hominy grits, 90-181

- fluid dairy products, 90-180

- furnace and stove oil, delivery ticket, 90-183

- in general, 90-170

 - exceptions, 90-170

- meat, poultry and seafood, sale by weight, 90-177

INDEX

References are to Title and Section numbers

WEIGHTS AND MEASURES (Continued)

- Commodities, sale of (Continued)
 - method of sale, 90-170 to 90-174
 - advertising of packages, statement of quantity, 90-174
 - misleading packages, 90-173
 - packages, 90-171
 - random packages, declarations of unit price, 90-172
 - misrepresentation of price prohibited, 90-176
 - net weight, use of in sales, 90-175
- Construction of contracts, 90-185
- Definitions, 90-153
- Definitions of special units of measure, 90-155
- Department of business regulation, powers and duties, 90-159, 90-160—See also State sealer, in bound volume
 - commodities, regulations as to, 90-170
 - complaints, investigation of, 90-163
 - correct weights and measures, marking as, 90-166
 - enforcement orders, 90-165
 - incorrect weights and measures
 - disposition of, 90-166
 - duty of owners, 90-169
 - injunction, authorized to apply for, 90-189
 - inspection of packages, 90-164
 - police powers, 90-167
 - regulations, 90-160
 - seizures for use in evidence, 90-167
 - testing, 90-161, 90-162
- Field standards, 90-157
- Fractional parts of unit of weight or measure, 90-185
- Injunction, 90-189
- National Bureau of Standards' definitions, tables and equivalents recognized, 90-154
- Offenses and penalties, 90-188
 - buyer furnishing weight or measure and taking more than represented quantity, punishment, 94-6-308
 - hindering or obstructing officer, 90-186
 - impersonation of officer, 90-187
 - prosecutions declared valid, 90-191
 - use or possession of false weight or measure as deceptive business practice, punishment, 94-6-308
- Presumptive evidence, 90-190
- Separability clause, 90-192
- State standards, 90-156
 - custody by department, 90-159
- Weighing devices, annual license required, application, fees, forfeiture, 90-160.1

WESTERN INTERSTATE CORRECTIONS COMPACT

Adoption, contents, 95-2308 to 95-2312

WHEELCHAIRS

Operation of self-propelled units on city or town streets authorized, 11-911.1, 11-911.2

WILLS

- Acts and events of independent significance, disposition by reference to, 91A-2-512
- Certified copies, formal requirements, fee for issuance, 91A-1-305
- Child believed by testator to be dead and omitted from will, share inherited, 91A-2-302 (2)
- Codicil to will, definition, 91A-1-201 (48)
- Contest of will, 91A-3-401 to 91A-3-413—See PROBATE AND ADMINISTRATION PROCEEDINGS, Formal testacy proceedings
 - costs and expense of contest, by whom paid, 91-1106
- Contract to make will or devise, or to die intestate, how established, 91A-2-701
- Custody of wills, 91A-2-901, 91A-2-902
 - deposit with court for safekeeping, 91A-2-901
 - duty of custodian upon death of testator, 91A-2-902

INDEX

References are to Title and Section numbers

WILLS (Continued)

- Divorce, annulment or decree of separation, effect on status of surviving spouse, 91A-2-802
- Evidentiary effect and use of will not probated, limitations and restrictions, 91A-3-102
- Execution of will, formal requirements, 91A-2-502
 - choice of law affecting validity of execution, 91A-2-506
- Handwriting analysis of signatures, 91-813 to 91-819
 - expense paid by petitioner, 91-818
 - expert's qualifications determined by court, 91-814
 - necessity for analysis determined by court, 91-814
 - petition for analysis, 91-813
 - report by expert, disposition, 91-817
 - report as property of petitioner, exceptions, 91-819
 - signatures subject to analysis, 91-813
 - will mailed by clerk to expert, notice, 91-815
 - return of will to clerk, 91-816
- Holographic will, requirements for validity, 91A-2-503
- Homicide on decedent by devisee as bar to taking under will, 91A-2-803
- Incorporation of material by reference authorized, 91A-2-510
 - separate writing identifying tangible personal property, 91A-2-513
- Intestacy adjudication and appointment of personal representative, petition for, procedure, 91A-3-402 (2)
- Joint will or mutual wills, presumption not created of contract not to revoke, 91A-2-701
- Mortgage or encumbrance of estate property executed after execution of will not a revocation, 91-131
- Penalty clause for contesting will or instituting other proceedings unenforceable if probable cause exists, 91A-3-905
- Personal representative, appointment and control of estate, 91A-3-601 to 91A-3-722—
See PERSONAL REPRESENTATIVES
- Persons qualified to make will, 91A-2-501
- Probate of wills, 91A-3-101 to 91A-3-1205—See PROBATE AND ADMINISTRATION PROCEEDINGS
 - evidentiary effect and use of will not probated, 91A-3-102
 - required for will found to be valid and unrevoked, 91A-3-409
- Proof of contents by secondary evidence, 93-1401-3
- Qualifications for making will, 91A-2-501
- Renunciation of devise by devisee, procedure and formal requirements, 91A-2-801
- Revocation of will, 91A-2-507 to 91A-2-509
 - contract not to revoke, how established, 91A-2-701
 - destruction, tearing or cancellation of document, 91A-2-507
 - divorce or annulment as revocation of disposition to former spouse, decree of separation ineffective, 91A-2-508
 - partial revocation, 91A-2-507 (1)
 - revival of revoked will, 91A-2-509
 - remarriage after divorce or annulment, 91A-2-508
 - subsequently executed mortgage or encumbrance of estate property not a revocation, 91-131
 - subsequent will as revocation, 91A-2-507 (1)
- Rules of construction, 91A-2-601 to 91A-2-612
 - ademption by satisfaction, provision in will or in contemporaneous writing required, 91A-2-612
 - after-acquired property included in property passed by will, 91A-2-604
 - all property of testator passed by will, 91A-2-604
 - choice of law as to meaning and legal effect of disposition, 91A-2-602
 - class gift terminology and terms of relationship, 91A-2-611
 - devisee surviving testator by one hundred, twenty hours required for taking under will, exceptions, 91A-2-601
 - "devisee" defined, 91A-1-201 (9)
 - devise failing for any reason becomes part of residue, 91A-2-606
 - intention of testator as controlling legal effect of disposition, 91A-2-603
 - issue of deceased devisee surviving testator by one hundred, twenty hours take by representation, 91A-2-605
 - deceased devisee under class gift treated as devisee, 91A-2-605

INDEX

References are to Title and Section numbers

WILLS (Continued)

Rules of construction (Continued)

- multiple residuary devisees, share of one failing for any reason passes to others, 91A-2-606
- nonademption of certain specific devises, 91A-2-608
- non-exoneration of specific devisee taking subject to security interest, 91A-2-609
- power of appointment not exercised by testator's general disposition, 91A-2-610
- specific devises, effect of changes, 91A-2-607 to 91A-2-609
 - devise subject to security interest, 91A-2-609
 - proceeds of sale or condemnation paid to conservator, 91A-2-608
 - securities, 91A-2-607
 - unpaid proceeds of sale, condemnation or insurance, 91A-2-608
- Self-proving of attested will, procedure, forms, 91A-2-504
- Separate writing identifying tangible personal property, disposition by reference to, 91A-2-513
- Surviving spouse, effect on status of divorce, annulment or decree of separation, 91A-2-802
- Terms used as descriptive of donees rather than of limitation, interpretation, 91-218
- Trusts, devises to, 91A-2-511
 - "devise" defined, 91A-1-201 (8)
 - "trust" defined, 91A-1-201 (45)
- Validity or construction of will established by court of another state, 91A-3-408
- Witness to will, qualifications, 91A-2-505
 - witness as beneficiary under will, effect, 91A-2-505
- Writing and observance of formalities required for validity, 93-1401-3

WINTER WORK PROGRAMS

- Definition of terms, 41-1901
- Legislative access to minutes of committee, 41-1907
- Municipal committees, composition and appointment, 41-1902
 - meetings of committee, 41-1904
 - minutes of committee, filing, 41-1907
 - officers of committee, 41-1904
 - service without compensation, 41-1903
 - terms of members, 41-1903
- Promotion of program through advertising and public relations, 41-1905
- State employment service to cooperate, 41-1906

WITNESSES

- Affirmation in lieu of oath, M. R. Civ. P., Rule 43(d)
- Coroner's inquest, subpoena of witness, compelling attendance, writing and filing testimony, 95-805, 95-806, 95-808
- Criminal cases
 - competency of witnesses, 94-8801 re des. 95-3010
 - husband and wife, 94-8802 re des. 95-3011
 - detention of person as material witness, limitations on, 1972 Const., II, 23
 - expenses of witnesses, 95-1801
 - face to face confrontation, right to, 1972 Const., II, 24
 - indigent defendants, procedure for obtaining subpoenas, 95-1801
 - preliminary examination, exclusion or separation
 - recognizance by or deposition after examination, 95-1203, 95-1204
 - subpoena, requirements and form, 95-1801
 - right of accused to compulsory process, 1972 Const., II, 24
- Fees payable to witnesses, 25-404
 - disbarment proceedings, 93-2020
- Gambling offenses, privilege and immunity, 94-8-423
- Hostile witnesses, examination as on cross-examination, M. R. Civ. P., Rule 43(b)
- Interpreters, M. R. Civ. P., Rule 43(f)
- Masters, witnesses before, M. R. Civ. P., Rule 53(d)
- Mileage allowances for use of own vehicle, 59-801
- Offer of proof, recording in case testimony excluded, M. R. Civ. P., Rule 43(c)
- Subpoena, criminal cases, 95-1801
- Subpoena for attendance of witnesses, M. R. Civ. P., Rule 45(a)
- Tampering with witnesses and informants as criminal offense, punishment, 94-7-207

INDEX

References are to Title and Section numbers

WOMEN

- Discrimination because of sex, protection against as civil right, 64-301
- discriminatory practices unlawful, 64-304 to 64-312—See CIVIL RIGHTS, Discriminatory practices
- Maternity leave from employment, 41-2601 to 41-2606
 - action in district court authorized, 41-2606
 - complaint by aggrieved person, filing, findings, order of commissioner, 41-2603
 - definition of terms, 41-2601
 - investigation and enforcement by commissioner, 41-2604
 - regulations by commissioner authorized, 41-2605
 - reinstatement to original job at end of leave, 41-2602 (2)
 - unlawful acts of employer, 41-2602
 - “employer” defined, 41-2601 (2)
- Pregnant women, prenatal blood specimen required for serological test, 69-6702
 - administrative expense to be paid by department, 69-6707
 - birth certificate to state whether test made, 69-6709
 - certificate of laboratory, form, 69-6704
 - confidentiality of information, violation as misdemeanor, 69-6706
 - definition of terms, 69-6701
 - person attending pregnant woman to have specimen taken, 69-6702
 - physician to take specimen at first professional visit, violation as misdemeanor, 69-6702
 - reasonable fee for test authorized, 69-6703
 - results of test, to whom exhibited, 69-6705
 - submission of blood specimen to approved laboratory, 69-6702, 69-6703
 - follow-up procedures in respect to positive tests, 69-6703
 - positive tests to be reported to department, 69-6703
 - waiver of test by court, religious creed as basis, 69-6708

WORDS

- Printing, 19-103.1

WORK ACTIVITY CENTERS

- See STATE PURCHASES, Sheltered workshops

WORKERS' COMPENSATION

- Access of division to employer's books and records, 92-820
- Account in agency fund, holding in trust, 92-840
- Administration fund established, deposits and disbursements, purpose, 92-116.1
- Assessment of insurers, 92-1005
- Attorney fees and costs, 92-618, 92-619
 - claimant's attorney, fees regulated, 92-619
 - tender or payment of compensation insufficient, attorney fees and costs allowed, 92-618
- Cardiovascular, pulmonary or respiratory diseases contracted in course of employment covered, 92-418, 92-418.1
- Cessation of operation by employer, statement and return of deposit, 92-209
- Compensation
 - beneficiary in foreign country, 92-506, 92-507
 - biweekly payments, 92-715
 - child under eighteen years of age, payment to, 92-508
 - deafness, occupational, 92-710
 - death benefits, 92-704.1
 - death of beneficiary, cessation of compensation, 92-502
 - election of employee between partial disability benefits and indemnity benefits, 92-709.2
 - indemnity benefits in lieu of partial disability benefits, 92-709.2
 - lump sum payments, 92-715
 - medical and hospital services, 92-706.1
 - occupational disease compensation, reduction by receipt of workmen's compensation, 92-1333
 - partial disability, 92-703.1
 - indemnity benefits in lieu of partial disability benefits, 92-709.2

INDEX

References are to Title and Section numbers

WORKERS' COMPENSATION (Continued)

Compensation (Continued)

- payments by insurer prior to hearing, reimbursement if not liable, 92-617
- payments to adjust for reduction of social security benefits, 92-704.2
- permanent total disability, 92-702.1
- schedule of specific injuries, 92-709
- temporary total disability, 92-701.1
- unreasonable delay or refusal to pay, increase in award, 92-849

Constitutional right to full legal redress for injury incurred in employment, 1972 Const., II, 16

Contractor as employer on contract work for public corporation, required compensation coverage, 92-206

Corporate officer's election not to be bound as employee under act, 92-208

Deafness, occupational, 92-710.1

Definitions

- average weekly wage, 92-423.2
- employer, 92-410.1
- independent contractor, 92-438.1
- insurer, 92-435
- permanent partial disability, 92-440
- permanent total disability, 92-441
- temporary total disability, 92-439
- wages, 92-423.1

Division of workers' compensation created, 82A-1004

- administrator as head of division, appointment, 82A-1004 (1)
- duties, 92-845

allocated to department for administrative purposes, exception, 82A-1004 (2)

annual report to governor, 92-842

attorney general as legal adviser, 92-120

attorneys, employment in certain cases, 92-120 (2)

blank forms printed and provided for administration, 92-117

"division" defined, 92-426

employees, when included in joint merit system, 92-121

fees of division, disposition, 92-119

minutes and records of proceedings, 92-117

powers of division, 92-814

public records of division open to inspection, 92-844

certain records exempt from disclosure, 92-847

certified copies furnished by administrator, fees, 92-846

reports and bulletins, publication, 92-118

rescission or amendment of order, decision or award, jurisdiction, 92-826

silicosis payments, administration, 71-1002

Election of employer and employee to come under act, binding effect, 92-204.1

certain covered employments, 92-209

failure to make election as misdemeanor, penalty, 92-207.1

"Employee" defined, 92-411

Employments covered by act, 92-207.1

Exempt employment, 92-202.1

Extraterritorial application, temporary employment in another state, 92-614

Fees of division, amount and disposition, 92-119

Fellow servant liability for intentional and malicious act or omission causing injury, 92-204.1

Game wardens' retirement benefits supplemental to workmen's compensation, 68-1426

Independent contractors excluded from coverage, 92-411

"Injury" defined, 92-418

Insurance policies subject to provisions of act, 92-1005

Insurance premium rates, 40-5601 to 40-5618—See INSURANCE, Workmen's compensation insurance premium rates

Insurer denying liability, notice required, time allowed, 92-615

costs and attorneys' fees assessed on claim found compensable, 92-616

payment by insurer not admission or waiver of defense, requirements, 92-615

suspension of payments until medical information received, 92-616

INDEX

References are to Title and Section numbers

WORKERS' COMPENSATION (Continued)

Insurer's reserve for unearned premiums, 40-3008

Juveniles in delinquency prevention or rehabilitation programs, coverage, 92-411

Legal representation of board, 92-120

Medical and hospital services to be furnished separate and apart from compensation, 92-706.1

eyeglasses, hearing aids and dentures, replacement or repair required, 92-706.1 (1)
(b)

Office of workers' compensation judge created, 82A-1016

Administrative Procedure Act applicable to proceedings, 92-852

allocated to department of administration for administrative purposes, 82A-1016

appeal to supreme court, 92-852

appointment, term, qualifications, 82A-1016 (2), (3)

compensation, 82A-1016 (4)

eligibility under public employees' retirement system, 82A-1016 (4)

jurisdiction and powers, 92-848

operating expenses, payment, 92-851

unreasonable delay or refusal to pay, jurisdiction to increase award, 92-849

Partner as employee, coverage, 92-411

Plan No. 1, assessments against employer, 92-902

Plan No. 2

agricultural employer, election to come under plan, 92-1102

death benefit or certainty of future payments, deposit by insurer as security, 92-1007

employers eligible to elect plan, 92-1001

form and manner of election, 92-1002

relief of insurer from existing liability, methods, 92-1008

renewal certificates, delivery to division, 92-1006

reports of insurers to division, 92-1010

Plan No. 3

account in agency fund, payments into, 92-1105

advanced rate for dangerous places of employment, 92-1105.1

death benefits, application and accompanying documents, 92-1120

default in payments by employer

action for collection of payments, 92-1114

cancellation of coverage by division, 92-1114

compromise of claim by division, 92-1114

increase in advance rate, 92-1108

injury to employee during default, 92-1115

remedies of employee, 92-1116

subrogation of state to employee's claim, 92-1116

disbursements from account in agency fund, 92-1122

dividends declared from surplus in account, 92-1110

employer election to come under plan, 92-1102

procedure for electing prescribed by division, 92-1103

income from account in agency fund, crediting to account, 92-1123

payroll computation in covered employment, 92-1121

physician's examination fee, 92-1119

premiums paid by employers, 92-1101

rates for insurance, determination by division, 92-1105

reserve funds, investment, 92-1112

segregated moneys, accounting by treasurer, 92-1113

Presumption as to elections to be bound by act, 92-209

Public corporations, required compensation coverage, 92-206

Reciprocity with other states, 92-614

Records of employer open to inspection by division, 92-820

Rehabilitation of injured workmen

account in agency fund, payments to and from, 92-1406

administrative expenses not paid by funds provided, 92-1406

completion of rehabilitation, certification to division, 92-1402

expenses payable to workman receiving training, 92-1403

reconsideration of award after rehabilitation, 92-1402

reference of workmen to department of social and rehabilitation services, 92-1401

INDEX

References are to Title and Section numbers

WORKERS' COMPENSATION (Continued)

Relief recipients working for county, coverage, 71-307, 92-411

Sole proprietor as employee, coverage, 92-411

Subcontractor's employee, liability of prime contractor for injuries to, indemnity, 92-410.1

Subrogation against negligent third party, rights of employer, insurer and employee, 92-204.1

Subsequent injury fund for vocationally handicapped employees, limit of employer liability, liability of fund, assessment of insurers, 92-709.1

Vocational rehabilitation or other on-the-job trainees, coverage, 92-411

"Workman" defined, 92-411

WORK-STUDY PROGRAM

Allocation of available funds, 75-9104

supplemental to other student assistance funds, 75-9105

Discrimination prohibited, 75-9108

Employers of students, eligibility, limitations, 75-9107

employer contributions, 75-9110

salaries and working conditions of students, approval required, 75-9109

Establishment of program, administration by board of regents, 75-9103

Purpose of law, 75-9101

Rules of board for distribution of program funds among institutions, 75-9106

Severability of provisions, 75-9111

Y

YELLOWSTONE RIVER COMPACT

Appropriation statement filed with department, 89-907

Compact unaffected by transfer of powers, 89-103.7

Information made available to compact commission by department, 89-914

Legal services by county attorneys, 89-915

Measuring device, duty to install, 89-908

Penalty for violations, 89-916

Records of water taken, filing with department, 89-909

Rules and regulations for enforcement of compact, 89-912

Suspension of action on applications for appropriation pending determination of existing rights, 89-8-103 to 89-8-111—See WATERS AND WATER RIGHTS, Yellowstone river waters

YOUTH COURT

Adjudicatory hearing, 10-1220

adjudication not criminal conviction, 10-1235

civil disability not imposed by adjudication, 10-1235

general public excluded, exceptions, 10-1220

Admission by youth of allegations in petition, 10-1220

Appeal of judgment to supreme court, 10-1225

stay of judgment during appeal, 10-1225

Consent decree after petition filed, procedures, 10-1224

dismissal of original petition upon termination of supervision, 10-1224

reinstatement of original petition, 10-1224

Court costs and expenses, 10-1226

costs of service and travel, payment from county funds, 10-1217

Definition of terms, 10-1203

Detention home for youth, county commissioners may provide, 10-1237

personnel appointed and compensation fixed by court, 10-1237

Detention of youth prior to hearing prohibited, exception, 10-1212

Dispositional hearing, 10-1221

dispositions permitted, 10-1222

order of commitment, form, 10-1222

predisposition report required, contents, 10-1221

Foster homes, youth court may establish procedures for administration, 10-1236

funding of foster homes, 10-1236

Funds, county commissioners authorized to provide, 10-1239

INDEX

References are to Title and Section numbers

YOUTH COURT (Continued)

- Gender, rule of construction, 10-1205
- Informal adjustment by probation officer, 10-1210
 - dispositions permitted, 10-1210
- Judge of youth court, designation and duties, 10-1233
 - disqualification of judge, 10-1223
- Jurisdiction of youth court, 10-1206
 - concurrent jurisdiction with justice, municipal and police courts, 10-1206
 - court to retain jurisdiction over youth, exceptions, 10-1208
 - transfer to criminal court, 10-1229
- Jury trial, 10-1220
- Number, rules of construction, 10-1205
- Petition initiating proceedings, form and content, 10-1215
 - time for filing petition charging youth in custody, 10-1209
- Place of detention, 10-1214
 - court to be informed of youth detained in adult facility, 10-1214
 - placement of youth in need of care, 10-1214
- Preliminary inquiry, duty of probation officer, 10-1209
 - actions permitted upon determination, 10-1209
 - review by county attorney if no petition filed, 10-1209
- Private agencies may receive physical custody of youth from public agency with legal custody, 10-1227
 - consultation by public agency with youth in custody of private agency, 10-1227
 - periodic reports on care of youth, 10-1227
- Probation officers, qualifications, duties, powers, 10-1234
 - detention of youth pending hearing, probation officer to be notified, 10-1213
 - salary and expenses, 10-1234
- Probation revocation proceeding, 10-1228
- Publicity forbidden, 10-1241
- Purpose of act, 10-1202
- Records in youth court, probation services and law enforcement agencies, disposition, 10-1232
 - confidentiality of law enforcement records, permitted inspection, 10-1230
 - inspection of youth court records, 10-1231
- Severability of provisions, 10-1204
- Short title, 10-1201
- Summons, service and content, 10-1216, 10-1217
 - rehearing on failure to serve properly, 10-1217
 - taking youth into custody upon service of summons, endorsement by judge, 10-1216
 - time for service, 10-1217
 - waiver of summons and notice, 10-1217
- Support of youth committed to custodial agency, court order that parent pay, 10-1238
- Taking youth into custody, appropriate circumstances, 10-1211
 - probation officer to be notified of apprehension and detention pending appearance, 10-1213
 - release from custody, 10-1213
 - rights of youth taken into custody, 10-1218
- Venue in county of residence, 10-1207
 - transfer of venue, 10-1207
- Waiver of rights by youth, 10-1218
- Youth court committee, composition and duties, 10-1240
- Youth guidance centers, 10-1242 to 10-1252, See **YOUTH GUIDANCE CENTERS**

YOUTH FOREST CAMP

See **STATE INSTITUTIONS**, Juvenile facilities, 80-2202 et seq.

YOUTH GUIDANCE CENTERS

- District youth guidance home program established, 10-1101
- definition of terms, 10-1102
- governmental aid to homes, 10-1104
 - federal assistance, 10-1111
- nonprofit organizations authorized for establishment of homes, 10-1103

INDEX

References are to Title and Section numbers

YOUTH GUIDANCE CENTER (Continued)

- District youth guidance home program established (Continued)
- placement of juvenile in home by department of institutions, 10-1109
- placement of juvenile in home by district court, 10-1105
 - continuing jurisdiction of district court, 10-1107
 - petition by juvenile for placement in home, 10-1106
 - support payments required from parents, 10-1108
- purposes of program, 10-1101
- rules and regulations, 10-1110
- Joint centers, establishment by two or more counties, 16-1008B

Z

ZONING

See PLANNING AND ZONING

DOES NOT
CIRCULATE

State Law Library Of Montana

KFM9030 1947 .A2

Revised codes of Montana, 1947, annotate

c. 1 Suppl 1975 93-95



3 0000 00035 9855

